

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114666555>

CA22N
XC12
-S78

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

WEDNESDAY, FEBRUARY 25, 1987

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

McLean, A. K. (Simcoe East PC) for Mr. Baetz

Also taking part:

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Carrozza, F.

Witnesses:

From the Concerned Friends of Ontario Citizens in Care Facilities:

Fussell, J., President

Jorgensen, Dr. B.

Carden, S., Vice-President

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, February 25, 1987

The Committee met at 10:07 a.m. in room 228.

The Chairman: Call the Committee to order. This is Bill 176 and 177, acts to amend the Health Facilities Special Orders Act.

This is the last day of public hearings, and we have two major presenters today, Concerned Friends this morning and the OMA this afternoon.

I am not meaning to say that there won't be another opportunity for people to have some input. As I indicated yesterday, Tuesday morning next we would expect certain groups to come back before us with a response to whatever amendments that have been drafted by the government and the opposition parties, and if Concerned Friends is interested in being one of those groups, I would be interested to know this morning before we get started so that we can make sure that you are scheduled for Tuesday morning to respond and whatever amendments that are available beforehand are sent to you.

So our representatives this morning. I know two or three, but perhaps you could introduce yourselves for the purposes of the Hansard, and then go through your brief any way you like. We have had it for some time, and I thank you very much for that, that was very helpful, and then we will open it up to questions following that. We do have a fairly good length of time this morning to have a full, frank discussion.

Ms. Fussell: Thank you, Mr. Chairman.

My name is Joan Fussell. I am the President of Concerned Friends of Ontario Citizens In Care Facilities.

Dr. Jorgensen: I am Dr. Birthe Jorgensen, and I am a member of Concerned Friends.

Ms. Carden: I am Sherill Carden, and I am the Vice-President of Concerned Friends.

Ms. Fussell: On behalf of Concerned Friends of Ontario Citizens In Care Facilities, I wish to thank the Chairman and Members of this Committee of Social Development for inviting us here today to present our views for the Nursing Home Amendments Act and the Health Facilities Special Orders Amendments Act. Since Concerned Friends has been pressing for reform in the nursing home system for the

past seven years, we welcome the opportunity to participate in the legislative process.

Mr. Chairman, I would just like to read a short statement, a summary of our response to the Acts and then perhaps go into more depth about some of the issues that we consider the most serious.

The Ministry of Health is to be congratulated for initiating the process of amending the existing Nursing Homes Act. The Act was known to have many deficiencies. There has been a continuing stream of serious complaints registered against many nursing homes. The Ministry, under the former Act, has experienced great difficulty in attempting to bring homes into compliance with the Act and regulations, and to ensure adequate and appropriate standards of care in Ontario nursing homes.

To provide the context for our views, I will briefly describe our organization. Concerned Friends was founded seven years ago by a small group of people who are appalled by the conditions in which their friends and relatives lived in Ontario's long-term care facilities. We have now grown to over 600 members. From the outset, Concerned Friends has been an entirely voluntary, non-funded consumer organization. Our only interest is the welfare of residents and our priority is resident care. We receive complaints daily from relatives and friends of people living in long-term care facilities, from staff working in the facilities, and occasionally from residents themselves. By far the majority of these complaints - and that's approximately 1,000 last year alone - concern for-profit nursing homes, and many are of an extremely nature, as examination of our correspondence with the Nursing Homes Branch or the study of Crimes Against the Elderly in Institutional Care by Dr. Jorgensen would show.

With our collective experience and expertise and with the care and well-being of residents as the only priority, a committee of Concerned Friends studied the Nursing Homes Amendment Act and we have found that the proposed amendments range from positive and progressive to dangerous and regressive. Some initiatives will require minimal revisions to become effective while more extensive revisions are recommended for others. There are also omissions to the legislation which have negative implications for residents if they are not corrected.

We stress the importance of ensuring the safeguards to residents' care in the Nursing Homes Act itself, and not relying heavily on the regulations which we have not yet seen and, from from past experience, which we realize can be too easily weakened in the future.

On the other hand, we recognize, too, that some of the

provisions in the amendment will be clarified when the regulations are drafted, and we stress that these recommendations which we make that cannot be incorporated in the Act itself be later included as enforcement in the regulations.

Now, in our brief - I am following at page 3 right now. First, I will give a summary, if I may, of the main points before elaborating further.

The government is quite correct in raising the need for a residents' bill of rights in the amendment. However, this bill of rights must be enforced, both by the Ministry of Health and by service contracts, in order to effectively protect residents' rights. Some serious issues which have not been addressed elsewhere may be included; such as, the right of access by residents to visitors of their choice such as relatives, chaplains, physicians and advocates, and the right of residents to informed consent for their treatment. In our submission, we propose an enforceable bill of rights which incorporate elements we know to be essential to residents' well-being.

While many recommendations for improvements are included in our submission, we are in agreement with the strengthening of licensing provisions, the issue of licenses with consideration of the public interest, reporting of ownership, the attachment of liability to licensee for breach, approval of management contracts, acknowledgement of the rights of residents, references to residents' councils, mandatory reporting of harm or suspicion of harm to residents, reference to service contracts for residents, recovery of excess payments on behalf of residents, provision for securing evidence from disabled residents, and increased power of inspection. So, you see, everything we are saying isn't negative; there are a lot of the things there that we do support.

At the outset we want to emphasize that, although we agree with the strengthening of residents' councils through this legislated inclusion, we strongly object to the proposed establishment of residents' council advisory committees and residents' council advisers. Residents' councils do provide a useful form for residents to have some voice in matters which affect them and residents and their representatives should be encouraged as much as possible to participate in the councils.

However, the councils are very much dependent on the goodwill of the nursing home, and the residents on the councils tend to be reluctant to raise the most serious issues through the councils for fear of recriminations from the home. The establishment of residents' council advisory committees and residents' council advisers, which would be answerable to the residents' councils, would also to be to a

large extent dependent on the goodwill of the home and, as such, would be an inadequate attempt at providing advocacy for nursing home residents. As we continue to state, nothing can substitute for an effective advocacy system independent of the Ministry of Health and the nursing homes.

Considering the enormous amount of public funding and residents' co-payments to nursing homes, it is essential that the government require full financial disclosure of all nursing home operations. That the lack of financial accountability of licensees has been acknowledged as a serious issue is a progressive step, but the proposed provisions are so weak as to be utterly ineffective in making nursing homes accountable to the public.

Financial accountability must also be extended to include corporations which operate nursing homes under contract with licensees and major suppliers of goods and services to each nursing home. The Ministry should also have overall information through a consolidated profit and loss statement where several homes are controlled by the same corporation or partnership.

The process of issuing or renewing licenses should be subject to public scrutiny through a public process and not exclusively within the discretion of the Director. The public should be consulted in decisions affecting the concentration of ownership and the balance of non-profit and profit-oriented homes, in the public interest. The public should have a voice in the decision to approve a prospective licensee who will have a profound effect on our vulnerable citizens, and in the intervention by the Ministry when the obligations of the licensee are not being met.

Enforcement mechanisms need to be enhanced to enable the Ministry to effectively protect vulnerable residents. The Ministry has the power to cite violations, or, at the other extreme, to revoke or refuse to renew the licenses, and to prosecute. But many other effective penalties could be introduced for violations of the Act; such as, compliance orders, immediate fines, charging the licensee the expense of re-inspection, charging the licensee the expense of Ministry operation of the home when a takeover is required, freeze on admissions reducing the home's population by attrition, or actively reducing the population of a home. Licensees with a record of repeated violations must not be permitted to acquire other licences or bed allotments.

The amendments proposes to allow increases in facilities, services, or bed capacity under special circumstances, raising two concerns. First, it is understandable that increases may be advisable in emergencies, on a temporary basis, as long as the home can adequately provide for the residents, but increases must not

be allowed to permanently increase the bed capacity of a home. Second, the types of services must specifically apply to the residents living in the home, and must not allow the nursing home to provide services to the community, such as Meals on Wheels and day care. Concerned Friends opposes the provision of community services by nursing homes which could become a step towards dependency on the institution eventually leading to institutionalization.

We are pleased that the proposed amendments will provide some measure of protection against reprisals for the making of complaints where residents are suffering. We wish to ensure that the mandatory reporting requirement apply to those with knowledge of conditions in nursing homes, but not residents or their relatives who may not wish to report through fear, no matter what the legislated protections are.

We also recommend the extension of the category of those to whom people can make complaints in order to comply with the mandatory reporting requirement and be extended the protection from reprisals.

In order to accomplish important measures for the administration of nursing homes and this Act in Ontario, we recommend additional regulation-making authority.

Now, these are all matters which have been raised by the proposed amendments or addressed in them. But we are also deeply concerned by the absence of address to important matters for residents which would result from the proposed Nursing Homes Act following these amendments.

I will now outline some of these omissions in page 5 of the submission.

The most important are quality of care and adequate staffing levels. For licensees, administrators, staff and inspectors to work towards providing or ensuring adequate care for residents, an acceptable standard of care must be established. The issue of staffing levels must be addressed to take into consideration the needs of residents for nursing and medical care, for assistance with the activities of daily living, and for living as full a life as possible.

The inspectors have been given expanded powers, but a serious omission is that the mandate of the inspection service has not been included. To be effective in ensuring that adequate care is provided in nursing homes, the inspection service must be given the mandate to enforce the legislation. Additionally, clear procedures for the investigation of complaints reported to the director must be mandated and established.

The Ministry has acknowledged the importance of management companies in operation of nursing homes by

including Ministry approval of management companies in the amendment. But we note that the administrators who have a similarly important effect on the operation of nursing homes should also be subject to similar approvals.

Several other important issues which very directly affect the lives of residents should be address in the legislation. One problem which continually arises is that residents or their relatives request, but are denied by nursing home staff, access to a second medical opinion.

Another is that residents are relocated, in non-emergency situations, without consent either within the nursing home or to another facility. To an older resident, relocation can be devastating and there should be safeguards in the legislation to protect residents from being shunted around at a facility's convenience.

Another issue is the involvement of relatives by the nursing home. One problem which arises periodically is the lack of communication with relatives of a resident when an emergency arises requiring speedy transfer of a resident to a hospital.

No provisions have been included to ensure that residents receive financial statements concerning their own financial accounts. These must be provided.

Nursing home staff are required to fill incident reports under certain circumstances, but there is weakness in the follow-up of these reports by the home and by the Ministry. Investigative procedures and remedial actions must be established in order to ensure adequate responses to these incidents.

The proposed amendments have not included the composition of the Nursing Homes Review Board which is a great concern because eligibility for membership is not established and there is no provision for consumer representation on this Nursing Homes Review Board. It is a positive step that residents' councils have standing before the Board. A Notice of Hearing should be made public to ensure that interested parties, individual residents, and representatives of residents have every opportunity to appear before the Board.

Then to move on to the House Facilities Special Orders Amendment Act.

Most of our recommendations regarding the Health Facilities Special Orders Amendment Act mirror related recommendations concerning the Nursing Homes Amendment Act with one exception, the glaring omission in the proposed amendment is that it does not state when the Act must be invoked. In order to assure protection of residents in

nursing homes where conditions severely endanger their health and safety, this deficiency must be remedied.

Now if I may, Mr. Chairman, I would like to begin to highlight some of the more serious issues in the submission in more detail.

The first is the bill of rights. As I said, we are pleased that the Ministry has acknowledged concern over the physical, social, cultural, and spiritual needs of each resident. This is page 8 in the submission.

However, if the Ministry seriously intends to protect residents and assure that residents' needs are met, they must enshrine protection in an enforceable bill of rights, not an enforceable statement of principles.

As the proposed section 1(a)(2) is now constituted, it merely "provides the fundamental principle upon which the Act is based", and that isn't enough.

The experience with an enforceable bill of rights in the United States has been that many problems can be resolved long before an adversarial or punitive approach starts. A Bill of Rights is an integral part of the advocacy on behalf of the long-term care resident. An enforceable bill of rights can be used by and on behalf of residents in daily discussions with staff and administration to address immediate needs. Hundreds of problems in long-term care facilities in the United States are resolved with the aid of the bill of rights each day without the need for more formal intervention.

I wonder if we should, at this point suggest -- there may be some questions on this bill of rights?

The Chairman: I prefer you to make the full presentation and then we will go through the range of questions after.

Ms. Fussell: Thank you, Mr. Chairman

My voice is...

The Chairman: Take as much as time as you need.

Ms. Fussell: Thank you.

The next important topic is the service contract. We have recommended that the bill of rights form an integral part of the service contract between the nursing home and the residents, enabling the residents to seek remedies for breach of contract through the courts. The bill of rights should also be enforceable by the Ministry.

We recommend a requirement that a standard service contract in the form prescribed by the regulations and including the bill of rights be negotiated with each resident.

The service contract must be negotiated upon admission and annually thereafter, and for the residents who are currently in a home there must be an opportunity to negotiate contracts with each one of them when this amendment is enacted.

We have made some suggestions about the issue of licences in the public interest on page 15.

I would like to move on now to page 16, on the refusal to issue licence, referring to subsection 4-(5) of the Act.

This subsection outlines grounds for which the director may refuse to issue a licence, based on his or her opinion. We favour strengthening these provisions of the Act to protect residents and the public purse from unscrupulous people becoming nursing home operators.

We suggest that the same grounds should apply to the management corporations and to administrators. Page 16.

We have a number of comments and suggestions to make about the public process in issuing and renewing licences. On page 17 this part begins.

Overall, the existing Act, section 4-(1), assumes that everyone has the right to a nursing home licence and the onus is on the director to say why the applicant should not have the licence. We believe that public input into the director's decision is essential under such a format.

We caution the Ministry on granting such strong powers to the Director, even subject to a hearing referred to in Section 7. The hearing may be granted at the request of an applicant who has been refused a licence, but unless public input is permitted, the hearing process would not protect the public from the exercise of poor judgment by a director. It isn't fair that an applicant who is refused a licence can ask for a hearing where the public cannot, if they have an objection to the granting of that licence.

Under "Undertaking To Issue Licence." Again, the discretion of the director in this decision is too powerful, broad and potentially arbitrary. We submit that the application and plans as well as the "conditions" which the director proposes to the applicant must be made public. The process by which "the director determines that the applicant has complied with the specific conditions" and grants or renews a licence must also be public.

Public notice must be given of any application for a nursing home licence. The public must then be given the opportunity to participate meaningfully in the decision of the director to grant or refuse to grant or renew a licence. It must not be exclusively the prerogative of the refused nursing home licence applicant to request a hearing.

On page 18, we would like to make a point on management contracts. We are pleased that the Ministry recognizes the influence of management contracts on the operation of the nursing home. We agree that these grounds for refusal to grant or renew a licence should also apply to management contracts, as in the subsections proposed.

So among the grounds for refusal will be "the failure on the part of the prospective management corporation to maintain an adequate standard of care and patient care plans."

Also, grounds for revocation or refusal to renew a licence should also include "failure to maintain an adequate standard of care".

On page 19, "Notice of Hearing" and "Opportunity To Comply". The addition of subsection 7-(2)(a), that the licensee be required to notify the residents' council and post in the home the director's notice and the notice requiring a hearing is a positive step, too.

We recommend that the director's notice and the notice requiring hearing should also be given by the licensee to the residents and to the representatives and to the public in the local newspaper. This notice of hearing should also include Section 8 of the Act as amended. It is essential that residents and their representatives be so notified of their rights to appear before the Board.

The addition of subsection 7-(4)(a) dangerously weakens the Ministry's control over licences of homes which violate the Act. By allowing additional "reasonable opportunity to comply with all lawful requirements for the issue or retention of a licence..." the Act would allow undue delay even in severe cases where the residents were receiving an unacceptable standard of care. Licensees have every opportunity to know the Act and to comply with it already. In cases severe enough that the Ministry considers revocation or refusal to renew, the licensee should not be entitled to additional time to comply.

We propose that this entire section be struck.

We also have a suggestion about the parties who may appear before the Board.

We are pleased that the Ministry is ensuring that

there will be resident representation before the Nursing Homes Review Board.

We are concerned that the person who represents him or herself to the Board as "an agent for the residents' council" may very well have at heart the interests of the licensee and not of all the residents. Residents or their relatives should be allowed to represent their interests directly, not necessarily through the residents' councils or an agent for the residents' council.

We are recommending that clause 8-(1)(c) be revised to: "a resident or residents or agents for residents".

We also suggest should that employees should have the right, too, to appear before the Board.

The bottom of page 20, "Relief In Special Cases: Increases In Facilities And Special Services".

This subsection is puzzling. We are alarmed that the section on relief and special cases may be amended to allow for increases in facilities, services, or bed capacity required in an extended care unit under special circumstances. But we have two serious objections.

First, the intent is to allow temporary increases in emergencies only. We suggest that the Act must be so worded. In the case of a catastrophic fire or epidemic in one nursing home, it is perfectly reasonable to allow neighboring homes to care for many of the residents, but there must a time limit placed on these emergency measures, otherwise this section is a huge loophole which could allow a licensee to negotiate increased bed capacity permanently, circumventing normal procedures, which we haven't been assured otherwise.

Also, there must be a provision in the Act that will ensure that the residents transferred to a nursing home under emergency services must be increased in proportion to the increase in resident population.

Our second objection is that subsection 13-(2) and 13-(3) do not specify that the services which may be increased may only be services provided to the residents living in the nursing home. It seems obvious that there is no definition included of the services which may be increased. So we strongly object to the provision of community services by the nursing home, directly or under contract with community agencies. Unless these subsections define only services to the residents living in the nursing home, the licensee may seek to provide, for a fee, meals on wheels or day care to the community under these subsections.

On page 22, "Recovery of Excess Payment". The

Ministry has made provisions for charging of residents for special services. We are pleased that this section increases the means by which the Minister may recover, on behalf of the Ministry or the residents, excess charges made by the licensee or charges made by the licensee for services not rendered.

To further strengthen this section, we recommend that the wording of both subsections 15-(1) and (2) be revised to read:

"... the Minister shall," (not "the Minister may")
recover the charges."

With respect to subsection 15-(2), which refers to charges made to the resident, we recommend that proper records must be kept of the residents' accounts showing all the the amounts and dates of these charges made and services rendered. For instance, if a resident's account is charged with a podiatry visit, the date of that visit must also be recorded on the account for monitoring.

Monthly statements of each resident's account managed by the nursing home must be given to each resident or person designated by the resident, or if the person has been declared incompetent, to his or her court-appointed guardian.

There must be a duty on the part of the Ministry to audit all residents' individual accounts at least annually to monitor, not only that the amounts balance, but also that the services were actually rendered for the amounts charged.

Also, with respect to proposed subsection 15-(2), there should be some assurances that this section, which allows the Ministry to recover amounts of excess charges on behalf of the resident and pay them back to the resident, must not remove the right of the resident, or his or her designate, to sue the licensee on his or her behalf to recover these amounts.

Relevant to the issue of residents' accounts is a another matter of great concern to us. We recommended that there be a provision in the Act which prohibits any licensee, owner, administrator, or staff person of a nursing home to hold the power of attorney for any resident in that home.

We also have some suggestions about the "Inspection Service", on page 23. The prescribed procedures in the regulations should include the obligation to proceed quickly and diligently; to obtain all information that may have a bearing on the complaint; to record and preserve all information and evidence obtained in the investigation; to interview the person making the complaint and the relevant

staff and administrator and to obtain written statements from them; to interview all witnesses named by the person making the complaint and the witnesses located as a result of the investigation, and to obtain written statements from such witnesses; to obtain photographs of all personal injuries or damage to property alleged, and any other information or evidence that is relevant to the investigation and could be preserved by way of photographs; attend, where appropriate, the scene of the alleged complaint and obtain any relevant evidence, and make notes during or as soon as possible after completion of each investigative step, and the notes should be preserved for a period of two years.

We commend, for your information as to possible, appropriate form of the regulations, regulations 7 through 15 of the Metropolitan Toronto Police Force Complaints Act, 1984.

We recommend that Section 16 be further amended to empower the Ministry to set qualifications required of inspectors.

We recommend that Section 16 be further amended to prevent conflict of interest by restricting the Minister, director, and employees of the inspection service from embarking on careers in the nursing home industry for a minimum of two years after leaving the inspection service.

Similarly, we also recommend that licensees, owners, and employees of nursing homes should not be permitted to become employees of the Nursing Homes Branch for a minimum of two years after leaving the industry.

Page 25 concerns the mandatory reporting of harm to residents, and we are very pleased that this section providing for the mandatory reporting of harm to a resident has been provided.

There are three inherent dangers in the wording, though, of 17a-(1) and (2) which should be corrected.

First, to say that "a person (who suspects harm to a resident) shall report the suspicion and the information..." puts the onus on residents and their families to report harm as well as others. Notwithstanding the protection against reprisals promised by subsection (2), we believe that residents and their families should be excluded from mandatory reporting and thus protected from potential prosecution for not reporting. We are not suggesting that they may not report, only that they may not be required to do so.

Further, we recommend that subsection 17a-(1) be revised to read:

Any physician, nurse, nursing assistant, health care aide, peace officer, clergymen, social worker, physical or occupational therapist, activity director, dietitian and any administrator or employee, owner or agent of a nursing home who has reasonable grounds (to suspect harm to a resident) shall forthwith report....

The second danger is that the protection from reprisals to the reporter of crime only apply if the complaint is made to the director. The protection against reprisal must also apply if the complaint is made first to the police. For instance, if a serious assault takes place the police should be notified and the protections must apply.

So we suggest that that subsection be revised as follows:

(that the person whom we listed earlier) ... shall forthwith report the suspicion and the information upon which it is based to the director or the police or both.

Similarly, we recommend that clause 17a-(2)(a) be revised as follows:

made a report to the director to the police or both under subsection (a);

The third danger is that subsection 17a-(2) only protects from reprisals the individual person who makes the report. That clearly omits any person -- omits the resident him or herself. Clearly, any person who reports harm should be protected from any form of reprisals, be they residents, relatives, volunteers or among those on whom there should be an imposed duty to report.

However, protection from reprisals should extend beyond the individual who reports. It should protect everyone involved, especially the most vulnerable people of all -- the residents. For a relative it is a very risky proposition to raise a serious concern about a related resident's condition or treatment. There must be some assurance that a reprisal against the resident would carry the same chance of penalty against the culprit as n would a reprisal against the non-resident and complainant.

We recommend that that section be revised to say:

No person shall dismiss, discipline, penalize, coerce, intimidate or attempt to coerce or intimidate any resident or any other person because the person has....

We are also concerned that this section has, as

drafted; the potential to deter the making of bona fide complaints.

Therefore we recommended that subsection 17a-(2), the following words be struck:

"unless the person acts maliciously or without reasonable grounds."

The next topic of major concern to us is the financial statements, financial reporting by the nursing home.

We are pleased that the Ministry is apparently acknowledging the absence of financial accountability in the nursing home industry and that this is a problem for the province and for the residents. Nursing homes operate on funding from the province and residents. Without accountability, they may cut corners on services in favour of making profits. Like public utilities, nursing homes must be made financially accountable. It is not enough to rely on assessments of care provided in nursing homes as an indication that funding is or is not well spent, especially in the absence of an established standard of care.

For two reasons this proposed amendment makes us question the sincerity of the Ministry's intention to actually make nursing homes financially accountable.

First, if this legislation is enacted, the licensee will only be required to submit a statement of profit and loss for that fiscal year; and any other matters respecting its financial operation that are prescribed by the regulations.

This legislation would not adequately address the problem. These clauses should at least specify that the licensee will be required to submit detailed operating profit and loss statements which will itemize every source and amount of income, and every recipient and amount of expenditures.

Second, if this legislation is enacted the Ministry will allow management corporations operating under contract with the licensee, freedom from financial accountability.

It is worth noting that the Ministry has, for good reason, recognized the impact of management corporations on the operation of nursing homes in the proposed section 4F under which the transfer of a contract would require approval of the Director. Yet, the financial accountability of a corporation under management contracts would not be required. At present, approximately 100 of the 331 nursing homes in the province are operated under manager contracts.

If this legislation passes uncorrected, we predict that 331 of the 331 homes will be operated by management corporations exempt from financial disclosure within two years. This situation is unconscionable if the government really intends to make the nursing home industry accountable and ensure that public funds and resident co-payments are spent on resident care, which is our central concern.

What is required is an audited financial statement prepared according to generally accepted accounting principles as defined by the Business Corporations Act for the nursing home, and for the management corporation. For each home there must be included an operating profit and loss statement showing all categories of income and all categories of expenditures as outlined on page 29.

In addition, to provide the Ministry and the public with financial accountability for each corporation which owns a number of nursing homes, each corporation must be required to submit annually a consolidated profit and loss statement which must include income from all the individual profit and loss statements, and expenditures from all the individual profit and loss statements.

We strongly agree with section 17c-(3) which requires the licensee to post the financial statements in the nursing home. The posting of statements will help consumers to identify those better homes which spend more on resident care. We suggest that the form for the statements be as above, so that a reasonable layperson could understand them.

On page 30, the subject of residents' councils. We would like the committee members to know that we do agree with residents' councils, that residents' councils provide an important forum for residents to have some voice in matters which affect them. And we are pleased that the provisions for residents' councils now in the regulations will be included in the Act itself.

It is interesting that in the current regulations most of them have been brought into the Act, but three were not and we think these three also ought to be moved into the Act, saying that: Every administrator shall in respect of each nursing home that he has charge of, within ninety days of being licensed, convene a meeting of the residents or their representatives or next of kin to advise the residents that they have a right to form a residents' council; and where a residents' council is not established in a nursing home after the convening of the meeting under that subsection, the administrator shall convene a meeting at least once each year thereafter until a residents' council is established; and when three or more residents or their representatives or next of kin at any time express an interest to their administrator in forming a residents'

council, the administrator shall forthwith notify the director of the interest and assist the residents, or their representatives or next of kin, in forming a council within sixty days of the request.

On page 31 is where our concerns come in with the residents' council advisory committee. The proposal to establish residents' council advisory committees in nursing homes is an ill-advised attempt at devising a system of advocacy for residents, and it is completely unacceptable to Concerned Friends.

To be effective, an advocacy system must be inherently independent of the service which it is to monitor. These committees would not be independent because of their structure. They are in part to be composed of members elected by the residents' councils, which are not themselves truly independent of the nursing homes. Vulnerable residents and their representatives are often reluctant to raise serious issues about the care provided in nursing homes because of the genuine fear of reprisals.

The other component of the committee would be members who live in the area in which the nursing home is located. There is no assurance offered that these community members would necessarily represent the interests of the residents and not of the licensee. As appointees of the Minister, we understand they are to be paid by the Ministry; they would clearly not be independent of the body which funds the nursing home. They would be accountable to the Minister, not to the residents nor even to residents' council. If they receive remuneration from the Ministry, their accountability to the Minister is compounded.

The broad range of responsibilities for the committee raise serious questions about their advocacy role. On one hand, they are to advise residents of their rights and responsibilities; while on the other, they are to review Ministry inspection reports and financial statement with the licensee. With divided loyalties, they are then expected to attempt to mediate and resolve disputes between residents and the licensee.

The committee's role of mediation raises questions about the responsibility of the inspection service. It should be the responsibility of the inspection service to intervene when serious complaints arise and compel the licensee to comply with the Act and regulations if the licensee is not doing so. While this committee is mediating, presumably the complaint is being ignored by the inspection service which has at least got some power to remedy the situation, and the cause for the complaint persists.

So we strongly recommend that the entire section on

residents' council advisory committees be struck from the amendment.

And, similarly, on residents' council advisors, the same criticisms of the residents' council advisory committee apply to the residents' council advisers. They would not be independent because they would report to the committee which are not independent of the residents' council, nor the nursing homes. As appointees of the Minister, their accountability is to the Minister, especially if they receive remuneration.

The lack of independence would render them ineffective in any advocacy role.

The powers of inspection which would be granted to the advisers would undermine the powers of the inspection service. The process of inspection by the advisers would delay action by the inspection service. A serious situation endangering residents could be allowed to persist while the body empowered to remedy the situation was ignorant of it. It would also be unclear to whom residents and their families should direct complaints about the nursing home.

So we strongly recommend that this section on residents' council advisers also be struck from the amendment.

And since the committees and the advisers are to be struck, so would the section saying that they would not be personally liable.

At the bottom of page 32 is the section on the liability of licensee. Again, we are pleased with this amendment which will clarify the legal responsibility of the licensee of the nursing home. Whether or not the duty is imposed on another person to carry out an obligation of the licensee, the licensee will be liable if the obligation is not carried out.

We have some suggestions to make, too, about penalties, on page 33.

We are pleased that the Ministry intends to raise maximum fines for violations of the Act. We submit that \$5,000 for a first offence and \$10,000 for a subsequent offence may be too low to be effective deterrents for some offences; for instance, someone who is convicted of operating a nursing home without a licence should be subject to a greater fine.

We recommend that the seriousness of violations be graded systematically so that licensees cited for more serious or repeated violations be subject to more serious penalties.

Aside from fines, there are a number of other penalties which the Ministry could use to exercise control over licensees in violation of the Act. The Ministry could levy immediate fines, it could issue compliance orders specifying the action and time period the licensee must take to come into compliance. If the licensee failed to meet the compliance orders, the Ministry would, by an established mechanism, take over the supervision of the nursing home charging the licensee for the expense of the supervision. Also, costs for re-inspection of a nursing home repeatedly cited for non-compliance should be charged to the licensee.

In more severe cases, the Ministry could place a freeze on admissions to a nursing home, reducing its population by attrition, or actively reduce the number of beds in the home. Licensees repeatedly in violation should be prevented from acquiring increases in bed allotments or other licenses, as in proposed section 4-(5).

We are pleased that the section on the evidence of disabled residents has been included. It is practical and progressive and we agree with the provision to secure the testimony of the disabled resident.

It would be important to ensure that adequate notice be given to the resident/witness before the examination so that the relative or friend of the resident may arrange to be present.

We have included some sections which could be added to the list of topics which can be regulated under the Act.

And then just briefly, the Health Facilities Special Orders Amendment Act, page 35. Again, the glaring omission in the proposed amendments to this Act is that it allows, but does not require the Minister to protect the health and safety of residents in nursing homes if the structure or operation of any home endangers the lives or safety of residents.

As the amendments in the Health Facilities Special Orders Act are similar to other amendments in the Nursing Homes Act, so are our other comments.

As I said, the overriding weakness of this Act is that it does not state when the Act must be invoked. In order to assure protection of residents in nursing homes where conditions severely endanger their health and safety, this deficiency must be remedied.

We suggest that clause 3-(1)(b) must be struck. It allows the Act to be invoked on the Minister's opinion that it is practical to do so. When people's lives are at stake,

the action must be taken immediately. Lives could be lost while practicality is being determined or debated.

Page 36, concerning the opportunity to comply. As with the proposed amendments to Section 7 of the Nursing Home Act, the addition of subsection 4(a) dangerously weakens the Ministry's control over licences of homes which violate the Act. By allowing "reasonable opportunity to comply with all lawful requirements for the issue or retention of the licence..." the Act would allow undue delays, even in severe cases where the residents were receiving an unacceptable standard of care. Licensees have every opportunity to know the Act and comply with it. In cases severe enough that the Ministry considers revocation or refusal to renew, the licensee is not entitled to more time to comply.

And similarly, in "Parties Before The Board", we are concerned that the person who presents himself to the Board as an "agent for the residents' council" may in fact represent the interests of the nursing home licensee. Residents or their relatives should be allowed to represent their interests directly, not necessarily through the residents' council or an agent for the residents' council.

So in conclusion, Mr. Chairman, we, Concerned Friends, urge the members of the Committee on Social Development in your deliberations on the Nursing Home Amendment Act and the Health Facilities Special Orders Amendment Act to consider our recommendations and keep in mind the implications of your decision on the 30,000 vulnerable residents living in Ontario's nursing homes at this time, because they are depending on you.

The Chairman: Thank you.

Before your presentation and everything that you had already given in the brief is on record, and I appreciate that.

We have about an hour for questions, and I have a number of people on the list already. Since your voice has been used for about an hour, maybe your associates will give you some help in answering questions as well.

Mr. Cooke?

Mr. Cooke: Thank you, Mr. Chairman.

I would like to start by asking a couple of questions about your suggested other penalties. Specifically on page 33, your reference to freezing admissions: "In more severe cases the Ministry can place a freeze on admissions".

I guess the question I have is if, in fact, the

condition of the nursing home is severe enough or poor enough that you want to protect any other residents from going into that home, if my parents or friend were in the nursing home, are they not also worthy of protection, and if the conditions are that severe, shouldn't there just be the revoking of the licence or the taking over of the home?

Ms. Fussell: I think it is a matter of degree, Mr. Cooke. Certainly we do agree that in many cases the Ministry should take over the home and operate it, that would be an excellent way of protecting the resident if the suggestion is made as an alternative to moving residents out of the home. In some cases, it is better probably to keep residents in the home and provide for them there rather than to move them, because the effects of relocating an older person are very severe.

So the suggestion of freeze on admissions is not suggested as an alternative to taking over the home, it is suggested as an alternative to moving residents out of the home if the home can be made acceptable for their --

Mr. Cooke: We can do that by taking over the home under the current legislation.

The other thing is that any of these actions obviously would be subject to hearings and so forth. I mean, if you freeze admissions you would have to have due process for the owner of the home.

Ms. Carden: The freeze on admissions also might be conditional. My thoughts on the subject were that that could be relevant in cases where there were problems around staffing levels, so that you felt that staffing levels continually were brought up, or staffing qualifications or whatever; that there should be a freezing of admissions.

Mr. Cooke: This would also be subject to appeals and to hearings and so forth; correct?

Ms. Fussell: Yes.

Mr. Cooke: It couldn't be unilaterally imposed.

On your comments on reporting, I understand the concern about residents' reporting and the fear that they would have. I am not sure where you draw the line, but if residents' families don't have to report because of the fear of reprisals, even given the fact that they are protected under the legislation - I mean, I gather that the same argument could be used for staff and where do you draw the line?

Would it not be more appropriate to draw the line by saying the residents don't necessarily have to report but that everybody else has to? I don't understand the

rationale for the family members, because exactly the same rationale can be used for staff not being obliged to report.

Ms. Fussell: We realize that relatives who care about the residents in a nursing home wish to do everything they can to protect those residents, and we received, as you know, 1,000 complaints last year about conditions in Ontario nursing homes alone. And one of the things that comes up almost every time is that the person who is making the complaint fears for the resident in the home.

Now, we have included the residents for obvious reasons, because the resident may not be well enough to make the complaint himself, and the resident may very well fear a reprisal because they are living there, but the relative of that resident will share that fear. The relatives knows, even better than the resident perhaps, that there is danger of repercussion. And we are suggesting that the relatives also then be excused from the mandatory reporting.

Now, we are not saying that a relative or a resident who makes a complaint should not be protected from reprisals. They should all be protected from reprisals. We are just saying that they should not be directly -- actually be subject to prosecution if they don't report.

Mr. Cooke: The calls that I get from staff have the same ideas as you, that they are calling confidentially, they don't want their name used and all the rest of it, because they fear losing their job.

Ms. Fussell: The relatives are, and residents, are afraid of some very real reprisals from a nursing home. It is not just a fear of some subtle mistreatment, but they can actually be threatened with being relocated and moved to another facility. So many times we have relatives come to us saying that they have complained to the administrator of the home and the administrator has said, "Well, if you don't like it, take your mother somewhere else", and we all know that that is not too easy.

Mr. Cooke: Your comments on conflict of interest, I think, are interesting. I would just like to ask the Ministry, since there had been changes to other legislation, I believe the rent review legislation has a provision that if you work for that section of government you can't for two years, I think, go up and set up a private practice to handle rent review cases because it is seen as a conflict of interest.

Did the Ministry consider that proposals for conflict of interest, or what is your general reaction to that proposal?

Ms. Hart: I don't know the answer to that but I

will --.

Mr. Cooke: I agree totally with the recommendations of conflict of interest as they relate to Ministry staff. I have a concern that if you say to anyone that is working in the field, and I think of a nurse, for example, who might make a terrific nurse inspector and had the experience in the field then applies for a job.

But under your suggestion anybody that works in the field would not be able to come and offer their expertise in the Ministry. Would it not be more appropriate to look at the conflict of interest rules as they apply in the one way from the Ministry to the private sector versus the private sector to the Ministry?

Ms. Fussell: I hear what you are saying, Mr. Cooke. But we believe that it should apply both ways. When you make a rule like that there is always going to be times when you lose by eliminating a good person in a position, but it is only for two years.

What we are trying to suggest here is some way of protecting residents again from a collusion between the Nursing Homes Branch and personnel of nursing homes. And I think that has to apply both ways, because you could just as easily have a person who had been working in a nursing home moving into the Nursing Homes Branch as, say, a nursing inspector and being in a position to overlook deficiencies in the home.

Mr. Cooke: Okay. Your comments on the appeal, when the director approves relicensing or the issuing of a new licence, that the only person that can -- if the licence is turned down then the applicant gets the opportunity to appeal if the licence is approved, no one else in the world gets to appeal.

I would just like to ask the Ministry the rationale for that provision? For example, the Ontario Municipal Board, if there is an application for rezoning, both those in favour and those opposed get the opportunity to appeal depending on what the decision is of the local municipal council.

Why would we not give the opportunity upon relicensing a home or issuing a new licence for other people to appeal if they disagree with the approval that has been granted?

Ms. Hart: The intention of this section, as I understand it, is to deal with the Charter of Rights and other statutes that require due process when you are taking away a right that there is no concomitant right in someone who doesn't hold the licence.

Mr. Cooke: I understand the due process, but certainly there is an interest that the resident of a home has, living in the home, whether the licence is renewed?

Ms. Hart: That may be, but that was not intention of that section to do with that.

Mr. Cooke: No, no, I realize that. I am just wondering, do you have reaction to that? Would it not be appropriate that residents or their representatives, or even people in the community should have the opportunity to appeal the decision of a director?

Ms. Hart: In certain circumstances that may be the case. I am willing to discuss it with you.

Mr. Cooke: Okay.

Coming out of the relicensing or purchasing of a nursing home, this is the case in Tavistock where, because of the lack of any consultation or ability for the public to intervene, decisions are made, and then people find out about these decisions.

I am just wondering if you can outline briefly for the committee what happened in Tavistock and the consequences of only allowing the applicant to participate in this process?

Mr. Chairman: Miss Jorgensen?

Ms. Jorgensen: It is our understanding in that situation the licensee was granted the licence and then chose to relocate the beds that go with the licence away from the community. That community had a particular need for the facility and it was a convenient location, and so on, to have the facility in that area for relatives and friends of the residents. And there was no opportunity for intervention in the decision taken to transfer those beds to another centre, which would be an inconvenience for the relatives and the friends to visit, and so on.

Also, of course, it didn't address the problems that you encounter when you relocate elderly people from one facility to another, and so on. The decision didn't take into account, as we understand it, the concerns about residents' health and about the relatives, and so on. That certainly is one of things that that situation has informed some of our recommendations here today.

Mr. Cooke: Aside from the fact that in the proposed amendments there is some criteria for sales and transferring of licences, and so forth, there is still, as I understand it, no provision that would change the consultation process or lack of consultation with the residents, the residents' relatives or the staff of the nursing home in the Tavistock

case; is that your understanding as well?

Ms. Jorgensen: Yes. As Joan said earlier, the form of licensing now is the assumption that you apply for a licence and it is within the discretion of the director whether or not to grant that licence.

We are suggesting that since we don't know what investigation is done by the Ministry into the past conduct of the potential licensee, and we don't know what weight is given to that person's past record, and so on, we feel that public information should be brought forward; that there should be some mechanism for the director to listen to the public input into that decision.

Mr. Cooke: One of the concerns that's been enunciated in this committee by some members of the committee is that if we change the Bill of Rights to a -- well, change the statement of principles to an enforceable bill of rights, and some of the other recommendations that you and other groups have made of public hearings and recognizing residents' rights and the consequences of it that follow from recognizing people's rights, that we are going to get into the system of legalese and hearings that the result will be confrontation between residents and owners of nursing homes.

Could you just respond to that concern? I am not sure, quite frankly, what the alternative is; when you recognize somebody's rights there is obviously things that flow from that, but it is a concern I know that some members of the committee have enunciated in the committee.

Ms. Jorgensen: I am pleased to respond to that. The experience in the United States, which we allude to only generally, and so on, is based on, because of our lack of resources, only on what we have able to read about various jurisdictions where -- let's take the bill of rights, first, where there is an enforceable bill of rights -- has been that because of advocates in some states there are ombudsmen established for the aged and the elderly in nursing homes.

Because these advocates can rely on the bill of rights, on a written document, they are able to negotiate at the scene and avoid any kind of adversarial conflict. The bill of rights provides a clear statement of what the obligations are of the nursing home and in turn what the residents can expect, and so on, and they set the same standard. But a rights conflict can be generated by confusion about who is required to do what and when, and so on.

In terms of the public hearing in the licensing decision, it strikes me that we as residents of any city, for example, get constant notice that we can go and make our

views heard on a decision to build an apartment building in our neighborhood or that there is going to be a new public library built down the road, and so on. We don't all choose to exercise that by any means, and because of the establishment of a process it doesn't necessarily mean it is going to be exercised by everyone in every case.

It is only that without that protection, without the protection of providing the mechanism at all, you are without a forum to bring forward some of these concerns, and by denying the forum you don't necessarily accomplish the result that you are going to get with licensees in all instances.

Mr. Cooke: I find it strange that if a nursing home is going to apply to have a section of the nursing home licensed under the Liquor Licence Act, which has happened in recent years, they have to have a public meeting, a public hearing, to approve that licence. However, if they want to have a licence for the nursing home, there is no requirement for a public meeting, a public input.

Mr. Chairman: Mr. Andrewes has a supplementary.

Mr. Andrewes: Do I understand a public hearing in terms of a licence, because I sense in here that as that licence comes up for annual review that there is a potential for a public hearing each time. So there is a potential for 330 public hearings each year, representing public bodies, at which representation would come from public bodies potentially, and that is really the equivalent of a hearing a day.

Ms. Jorgensen: There is that potential. I guess what I have said earlier and the way that we thought that yes, there is a potential, but it is not a potential that is going to be exercised in every case.

Mr. Andrewes: Why not?

Ms. Jorgensen: Well, because what we hope to accomplish in this whole process is an improvement in the standards of nursing homes and the way in which they manage them and operate them, to such an extent that they will perform their function and they will operate in a way in which the licensee will not be challenged.

Mr. Andrewes: I can only tell you my experience with past instances where public hearings have been accorded under the provisions of the OMB, for instance, where in these hearings anyone with an axe to grind, whether they happened to live in Toronto and the property in question is in Windsor, anyone that can demonstrate some interest, some tangible interest, can, in fact, cause a hearing to be held. And anyone who wishes to carry their concern about nursing

home operations, I will tell you, can in fact be a participant in a public hearing forum.

Ms. Jorgensen: I think the way this is drafted is that we say that certain people have as a right an ability to appear and that in some instances it would be at the discretion of the Board whether someone's interest has a bearing on the matter. So we are not opening it up completely; we are saying that residents - and particularly residents as our concern - have a right, and should have the ability to appear.

I am not personally familiar with the OMB requirements as to who would fall within the category of those who have an interest in the persuasions. Ours are not that broad. Our recommendations are not so broad as to say that anyone could come before the Board.

Mr. Andrewes: It is not too clear.

Ms. Fussell: Perhaps I can outline the process as you have mentioned it. We are suggesting that when the issue of renewal or revocation of a licence comes up, that prior notification be given to all parties. So if it is issuing a licence it would just be to the community and it would be published in the papers. If it is about renewing or revoking, we suggest that every resident, their representatives or residents' council as well as the public, be notified that the subject is coming up. And then we suggest that with the issuing of a licence, that there be a public information meeting so people can be informed about what is going on so it doesn't happen after the fact.

And then, that all those parties who are interested may write written submissions to the director, requiring that the director, within a limited period of time, respond to those. And then if the people are not satisfied with that, they may request a hearing. So they would have to go through a process before a hearing would begin because, we agree with you, that it is not advisable to have three hundred every year for every home. So some good reason would have to be given for suggesting a hearing.

And then the notices of hearing would have to be made to all the residents and their representatives and residents' council and posted in the hallway and published in the newspapers as well. So step two, everyone would be informed of the hearing.

But as it is now, and it isn't fair, the licensee has the right to call a hearing if he has been refused a licence. But the nursing home residents who are really affected by it are not given the same privilege. And we are trying to say that the residents should at least receive the same consideration. They have to live there.

Mr. Andrewes: I don't have any particular objection to hearing the issuance of a licence, and I am at your mercy as to how many new licences a year are issued. I wouldn't expect it to be more than eight or ten. Am I correct?

Ms. Fussell: The Ministry would be able to give you those figures.

Mr. Andrewes: I don't have any problem with the instance in which a review can be requested because there would be no risk given to public participation, but I do have some concerns about a wide open process which could, in fact, invoke a hearing for every renewal that comes up.

Mr. Chairman: It seems we both have similar concerns. Let us move on. Mr. Cordiano is next and then Mr. Callahan.

Mr. Cordiano: Thank you, Mr. Chairman.

At page 29 you talk about a need for a consolidated profit and loss statement. And the fact is I am in agreement with financial statements in that entire process. But is it not - I mean, it is great to have more information, but I think it is very, very appropriate to have financial statements for each particular nursing home, because in a consolidated statement we could amass a number of financial data, grouping them together and not really seeing how the operation of one particular home is being handled financially, allocation for food and other services. So I think it is so very, very appropriate to do that.

Ms. Fussell: Absolutely. We are asking for both. We are asking that an operating profit and loss statement be submitted annually for each home, itemizing exactly what is received by the home in government subsidies, residents co-payments or the private and semi-private payments, and even into other sources of income, such as bequests in cash or donations, and that every expenditure also be listed. So all the different categories of wages for nursing, supervisory, maintenance and auxiliary staff be included; all expenditures on food - it is extremely important; on different activities for residents; on maintenance and utilities. So that information at a minimum be provided to the Ministry for each home and that information be posted in each home too and made available to individuals who might want to use the information in evaluating the relative merits of different homes in making a difficult decision in choosing a home for a relative.

But then, to give a broader picture, we are suggesting that a consolidated profit and loss statement incorporate that statement for each home into one consolidated statement for a corporation or a limited partnership which is a licensee for a number of homes. If a licensee is doing a good job and is providing good service and is spending a

reasonable amount on each resident for these services that are required by the Act, then I can't see that there would be any objection to letting it be known. In fact, if anything, it is a much better advertisement than an ad in the paper would be.

Mr. Cordiano: One of the arguments put forward, for example, food costs: if food costs were consolidated for a licensee that operates a number of nursing homes, it may be lower than another licensee that operates one home and, as a result, people may tend to look at that and say you are not spending enough on food when, in fact, that may not be the case.

Do you find that that is very plausible, or ...? I mean, it is just a straight matter of scale of economies where you are buying in major quantities and therefore you would be able to reduce your price.

Ms. Fussell: I don't think anyone would disagree that an institution which buys a larger quantity can economize on price. But I think you should give some credit to the consumer who reads those reports to appreciate that there is some difference, but also, relatively speaking, two-ten a day is hardly enough to feed a resident.

Mr. Cordiano: I am not disagreeing that perhaps it is great to have more information, but I think it is absolutely essential that you have the profit and loss statements for each home and if I had to choose between the two, it would be more important to have a profit and loss statement for each home.

Ms. Carden: Hopefully you won't have to choose between the two. It is not unheard of that a line-by-line accounting would be required for a service delivery agency who look to agencies which are providing services in the community for people with mental handicaps or psychiatric labels. You will see that line-by-line accounting is often required. It seems to Concerned Friends that not only is this something that is very important from the perspective of the consumer of the service, but it is also very important in terms of accountability to government for the use of public funds. So the corporate statement, consolidated statement, would be of use in that regard as well.

Mr. Cordiano: I see under Section 17(c), 1(b) states: "any other matters respecting its financial operation that are prescribed by the regulations." So you will have to see what those regulations are.

Ms. Fussell: Yes, but we don't know what they are either. And we just feel that there is too much open there for question. And just to say, too, that a statement of

profit and loss for that fiscal year is required, just isn't enough. We believe there should be more specified right in the Act and then elaborate on it in the regulations.

Mr. Cordiano: You are saying that a profit and loss statement is not sufficient?

Ms. Jorgensen: It is as drafted in the proposed amendments.

Mr. Cordiano: What it simply says in part (a) "...a statement of profit and loss for that fiscal year", so what else would be required?

Ms. Fussell: Well --

Mr. Cordiano: A balance sheet?

Ms. Fussell:. What we have suggested here, the operating profit and loss statement, including all these items like expenditures and sources of income.

Mr. Cordiano: Okay. I will move on to the...

Mr. Andrewes: I have just a have a supplementary to that.

Mr. Chairman: Sure.

Mr. Andrewes: If a nursing home produces a statement to your satisfaction year after year and shows a consistent loss, what do you recommend then?

Ms. Jorgensen: Maybe... Why would that differ from a consistent profit? Why would that differ?

Mr. Andrewes: I am assuming the level of service is there, that it meets all the standards and is entirely consistent. Have you any recommendations in that case?

Ms. Jorgensen: No.

Mr. Chairman: Miss Hart.

Mr. Cooke: Maybe there is a non-profit.

Mr. Andrewes: And then try and find the shareholders! (Laughter)

Mr. Chairman: Miss Hart.

Ms. Hart: Just for purposes of clarification.

During clause by clause, we will be tendering the format that is proposed under the regulations for the

gathering of financial information which does, I am advised, include all of the items that you set out in your proposal. Can I request some information on that?

Ms. Jorgensen: That would be an audited financial statement?

Ms. Hart: They are audited now.

Ms. Jorgensen: It is just that we spoke with some experts in financial statements actually about what form we should ask for. And they specifically said that it needed to be an audited financial statement in the form defined by the Business Appropriations Act, to ensure that accountants were brought in in the production of it and so on. They also made the point which we haven't made in the submission that, given the rush at year end and so on, it may be more fair, as the amendment proposes, it says that these statements were to be provided in 90 days and they suggested that that would be an unfair burden - that we should ask for 180 days after the year end.

Ms. Hart: To give the accountants a chance.

Ms. Jorgensen: To give the accountants a chance.

Mr. Chairman: Is it possible to share the draft with the people who will be giving the amendments so they can talk about that in those kind of terms when they come forward?

Ms. Hart: Yes.

Mr. Chairman: Mr. Cordiano.

Mr. Cordiano: I would like to move on to residents' council advisory committees. I have a bit of difficulty with what you are saying here, the whole question of the independence of these committees. You say the committees would not be independent because of their structure. They are, in part, to be composed of members elected by residents' councils which are not, themselves, truly independent of the nursing homes.

Isn't what you are saying there that in fact the residents' council really could not determine their own, have some control over their own destiny? That is what is intended with this section and that is what I believe should be a role for residents' councils; that is, looking at the various sections: financial disclosure, investigating complaints... I mean, there are a number of items that are enumerated in 17(b), subsection (2).

The committee is to be made up of no fewer than three residents' council members and no more than three members

from the community as well. Why would they not be independent of the nursing home in the sense that they are not going to be able to determine what in fact they want to do as a committee separate from the administration of that nursing home?

Ms. Fussell: It has been our experience from complaints and comments we have received from residents and relatives that it usually is the most active people who are members of the residents' councils and sometimes relatives of other people as well are participating, but that they have told us that they also feel that they can discuss some of the less serious issues, raise less serious issues with the administration of the nursing home, but they don't feel that they can raise the more serious ones and it is necessary to go outside.

If they were able to resolve those issues with the nursing home, they wouldn't be coming to Concerned Friends complaining and saying that they feel that they are in a vulnerable position; they are very vulnerable. If they complain and the residence administration knows that they are complaining, they have to live there; they have to live there 24-hours a day. Even if they don't actually receive reprisals, they fear there are reprisals. And they also can be threatened with relocation or various other

Mr. Cordiano: Sure. We heard from seniors I suppose on residents' councils yesterday, an association for residents' councils. They have a very strong and clear view that in fact residents' councils should have a large role to play in determining their own fate and investigating some of these things that we are talking about and having the support. That's what we have been hearing. The message is pretty loud and clear that they should have support from outside members. They may have some questions about the structure of the committees, the various three-tier approach, the role of the adviser, but what is intended, I believe, in this section, is to strengthen the role of the advisory committee, strengthen that entire process of acting as the investigative body, if you will, to settle minor disputes; acting as a body to look at long-term planning for the nursing home in the sense of how it will better benefit nursing home residents.

Ms. Fussell: I hope you haven't misunderstood us. We are not opposed to residents' councils in any way. We are very much in favour of residents' councils and residents' participation in the activities in the home and in having some control over their own lives through that forum. We also would support strongly any encouragement to involve people from the community in the residents' councils and we think that anyone in a community who, for instance, befriends a resident in a nursing home, can be their

representative on a residents' council. So there are many ways of involving the community that way. We are very much in favour of that.

What we are objecting to is the residents' council advisory committee which is then an arm of that residents' council really and paid by the Ministry of Health, so is then very much dependent on the council and, therefore, on the home or on the Ministry, and that is not an independent way of advocating for residents.

We are not opposed to advocating as a particular resident either, but we say that the advocacy should be independent from that system.

Mr. Cordiano: The whole question of advocacy however is, I think, a separate issue, apart from what the role of these committees, or the role of the advisory is to be. And that is to make the long-term planning, if you will (if I can use that term; it is not really planning) but for residents to have a hand in determining how the nursing home, the home they live in, will be run in the future and in some way recommending it be run this way or that way and looking into some very difficult problems.

Perhaps when these things become some very serious problems, then obviously you have the Inspections Branch, which will be divided into part inspection and part enforcement - some of the recommendations which have come forward - and hopefully that will happen very shortly. But I don't think that the role of the committee and the role of the advisers really handles any advocacy role that is required in this whole process.

Ms. Carden: If I could respond to that?

If you take a look at the amendments, and the specification of the function of the committee it talks about reviewing the operation of the nursing home, it talks about mediating and resolving disputes between residents and licensees. Advocacy is defined as acting on behalf of the individual, in this case a resident. So I do see the function of the advisory committee very much as one of advocacy.

As a member of Concerned Friends, there are a number of concerns about the independence. We have undertaken quite a serious study of the whole issue of advocacy and we have found that existing advocacy programs can be focused in two ways in terms of the issue of independence. The first being that advocates who are attached to service delivery agencies, specifically of the function of the committee, it talks about reviewing the operation of the nursing home; it talks about mediating and resolving disputes between residents and the licensee and having a representative

acting on behalf of an individual, in this case a resident. So I do see the function of the advisory committee as very much one of advocacy.

The second thing is that when a service is funded by the Ministry, the Ministry of Health is legislating the very committee, and they, in fact, as Joan pointed out, would be funding the committee and the members of the committee. There is a tendency or there is a problem with addressing that Ministry and complaints that relate specifically to the Ministry.

Individual advocates across the province have spoken to us and have said, when we come up against the Ministry that funds our program we are in trouble. And, in fact, that is why we get some complaints from advocates spoken through our organization. So we are concerned about that.

We are concerned about Ministry appointees dominating the system. We are also concerned that an individuals may not want their complaints to go through that kind of forum, particularly if we are talking about a serious complaint such as assault or abuse, and so on.

Finally, I say that residents already have a lot of the authority to mediate through the residents' complaint committee in the existing legislation, or in the amendments to the existing legislation, without having to establish a complaint advisory committee or whatever.

Mr. Chairman: Ms. Hart, would like to raise a matter?

Ms. Hart: Perhaps I could clear up the misconception. There is no intention that the Ministry will be funding the appointees to the advisory committee. The only suggestion about funding - and this is not intended that it be direct - is for the advisers, and it is intended that those advisers would be further arms and legs for the residents' council and the committee for a group of homes in the region.

Mr. Cooke: How would they be funded?

Ms. Hart: So, as was indicated earlier when you weren't here, Mr. Cooke, it is the intention of the Ministry that it would be hopefully through a non-profit agency to the advisers - would be attached to that agency. And the example that was given was the Cancer Institute which operates Princess Margaret on that kind of basis. But there was no intention that the appointees to the committees would be paid positions, first of all, or would be funded by the Ministry.

Those are community appointments to the committee and it has always been intended that the suggestions from the

community would be taken -- it is right in the statute that those people must come from the area in which the home is located. I wanted to make that clarification because some of your submissions seem to be based on the fact that there is a lack of independence because these people are paid by the Ministry.

Just before I close, I would reiterate the comments of my colleague that there is no intention that this would be an alternate system of advocacy. The committee and the council look after, or are concerned with the operation of the home as a whole, not with the rights of individual residents. As you know, there is a whole study being undertaken by Father Sean O'Sullivan about the question of advocacy, and we do not see that his proposals, whatever they might be, would be inconsistent with what has been set up under the statute, because he has been asked to look at advocacy for individuals.

Mr. Chairman: Rather than getting into a debate again, because this seems to be a rather popular matter, some members will point to 17(e), sub (2)(e) and say that that is absolutely individual advocacy in the sense that it is an attempt to mediate or resolve any dispute between a resident and a licensee. One of the issues that is coming up here continually is the question of what is the definition of the roles here and the interpretation. The government is saying it is not meaning this to be advocacy; others are saying it seems to be advocacy.

I would commend to you some of the suggestions we have had from other groups around another kind of definition for the roles of the advisers and advisory committee that has been brought forward much more in terms of facilitators, people who assist the local residents' council to operate effectively, and perhaps before you come back again you might have a look at some of those suggestions that came from Ottawa yesterday and I forget where we have heard another version of it a few days before.

Ms. Jorgensen: Can I just respond in part to what we have heard, because we clearly had some difficulty understanding the Minister when he was present last week about the intention in this regard. To us there are two very important things:

One is that it be clear to everyone involved in the dual residence and to the administration of a nursing home and to the Ministry personnel, and so on, what a process of complaint is going to look like and how the investigative process is then going to be brought into that, and part of our concern that we've expressed about the advisory committees and the advisers is that this -- it then becomes unclear about how one effectively complains to resolve some of the problems in nursing homes. So if you could keep that

in your mind when you look at what this shape is going to be and what, you know, what the final thing is going to look like, and so on.

Our second concern is that the investigations be done thoroughly and well, and as you've seen in our brief, we recommend additional -- and we recommend, in fact, to the committee a look at some of the regulations governing proper investigative procedures and so on to be followed by investigators and investigating complaints, because unfortunately it has been the experience for Concerned Friends with complaints in the past, through the inspection service, that since they were in some instances, perhaps, not as thoroughly investigated as they wanted to, and so that's another concern that we have. And that has prompted some of the criticism of the Advisory Committee, as it appears to be constituted, and the advisers.

It is our hope that the inspection service, in its compliance role, will have the strength and the personnel will be strengthened, and so on, to better monitor what is going on in nursing homes.

Mr. Chairman: I guess I've raised a point of order to be clarified. We have ten minutes to go, I have three speakers. I am wondering what -- there are several possibilities; one, I think a lot of you will presumably want to break at lunch; we have meetings we have to go to. Are you available after lunch for a brief period of time or is the morning the only time you have got---

Ms. Jorgensen: Sorry, are these questions outside of what we have written in the brief, a clarification--

Mr. Chairman: The prime things we have already heard, but we haven't heard yet from Mr. Andrewes except on supplementaries that he has asked, or Mr. Callahan and others; Mr. Cordiano has other questions. So it might be that we could use a half an hour after the break or come back at 1:30.

Ms. Fussell: I am sorry. Did you say coming back at 1:30?

Mr. Chairman: We could come back at 1:30.

Ms. Fussell: Until when.

Mr. Callahan: We have a briefing with the Minister of Health.

Mr. Chairman: About 2:00 I gather you have a problem coming back at 1:30?

Mr. Fussell: Yes, we would be able to make ourselves available.

Mr. Chairman: At 2:00?

Ms. Fussell: I thought you said from 1:30 until 2:00?

Mr. Chairman: I understand now that 1:30 is not possible.

Ms. Jorgensen: Can you secure our parking place?

Mr. Chairman: I have unbounded powers, but those are not one of them, unfortunately.

Ms. Fussell: Two of us would be available at 2:00.

Mr. Chairman: That would be great. Then let's continue along until the break and then come back at 2:00.

Mr. Cordiano:

Mr. Cordiano: One final point I would like to make. The Ministry of Labour set up the office of the worker's adviser, and it seems to be working well--

Mr. Jackson: Hansard is reporting, not laughing.

Mr. Cordiano: --reply to my friends in the third party.

Mr. Cooke: There is no parallel at all.

Mr. Cordiano: Sure, there is the role of the adviser.

Mr. Cooke: You have got a corporate Board and then you have got a government. There is no parallel.

Mr. Cordiano: Sure, there is. The point here that I was trying to make is that the worker's adviser is paid from the Ministry and through a corporate Board, if you will, but nevertheless still funding from the Ministry and it seems to be working well. In fact, as I recall, many of my colleagues were very supportive of that incident, and it went the wrong way. So I just want to point that out.

Ms. Jorgensen: We can't comment on that.

Mr. Cordiano: I didn't expect you to.

Ms. Jorgensen: I don't know how long it is--

Mr. Cooke: He doesn't believe our comments.

Mr. Chairman: Mr. Andrewes?

Mr. Callahan: Mr. Chairman, I can save these ladies coming back, perhaps. If Mr. Andrewes would finish before

12:00 they don't have to come back because my question has already been asked.

Mr. Chairman: Let's wait and see how long Mr. Andrewes goes.

Mr. Callahan: I just figured I would put the pressure on him.

Mr. Chairman: I understand.

Miss Carden is going to respond.

Ms. Carden: Yes.

Mr. Andrewes: In the context of where you were in --

Ms. Carden: Members of our organization have studied the Psychiatric Patient Advocacy Program, although I have not personally done any of that study, but I am aware that there are concerns around the lack of independence at that level of the Ministry.

I think what the issue around that particular program is, that you can't hinge ineffective advocacy systems and programs on personalities; that if you have a mandated system that has access guaranteed for the advocate, then that deals with the issue of the benefits of an internal system and the access to the facility and to residents' records, and so on. So we are recommending that an effective advocacy system must be independent both from the service providing Ministry and from any service delivery agencies, and have guaranteed access.

Mr. Andrewes: To go back to the residents' council, it is your view that there should be some provision of advisory capacity to that residents' council?

Dr. Jorgensen: Apart from what is also provided, you mean? To bring in relatives and residents and persons of their choice to attend meetings and advise?

Mr. Andrewes: There was a suggestion made in one of the delegations that the residents' councils in that capacity, that resource, that individual for individual, act as a resource to the residents' council and this residents' council advisory committee. There are instances where residents' councils require certain expertise and advice.

Dr. Jorgensen: In our experience they have sought expertise and advice from groups outside--

Mr. Andrewes: On a voluntary basis?

Dr. Jorgensen: --as a residents' council on the

whole, that is true.

Mr. Andrewes: And you are saying you need to expand that to make it more readily available?

Ms. Fussell: We would be in favour of it being encouraged, but the Ministry does not have the policy encouraging the participation of outside people in residents' councils, by all means. I mean, the more doctors and lawyers that want to sit on the residents' council the better.

Mr. Callahan: We wouldn't mind some lawyers--

Mr. Jackson: We have too many on this committee.

Mr. Andrewes: What we are looking for is advice from the -- contemplating body--

(Interjection)

--please can we see the residents council adviser next week to at two o'clock, and if that individual would make themselves available. What I think you are talking about are the volunteers' contribution. I am talking about the designated individuals that would act for a region of the province as in a resource person for the residents' council.

Dr. Jorgensen: Well, residents' councils are involved in financial -- qualified for legal assistance, and so on. So what kind of expertise would you seek?

Mr. Andrewes: Well, it may be expertise as described under this plan in terms of assessing financial statements, accessing other agencies or trying to come to grips with the information in those financial statements as it might pertain to the operation of the home.

Ms. Jorgensen: This isn't something that the Ministry of Health could provide through their personnel to the residents' council?

Mr. Andrewes: I don't know.

Ms. Jorgensen: Don't they have personnel with expertise in those areas who could be called in?

Mr. Cooke: What about funding through the Residents' Council Association? If there was adequate funding of the Ontario Law Association that they could properly provide some staff to the residents' council.

Dr. Jorgensen: I wouldn't expect --

Mr. Andrewes: Can we move on. Can we move on to the area of the Minister's ability to purchase extra services.

I have two concerns here. One is that in doing that, in providing that opportunity to the Minister by this amendment, it could also provide the Minister with an arbitrary means of purchasing services from nursing homes.

I think your concern was that those services might not go through to the resident, and you prefer that there be something in that amendment that essentially requires those purchased services to go through the residents.

My concern is that the purchase of those services might be arbitrary. Can you comment on that?

Ms. Carden: I am not sure I quite understood your question. Could you repeat it?

Mr. Andrewes: Let's say we have three nursing homes in city "A", all three apply for funding under some program and the Ministry can say, well, I like that one there and I don't like those two. That to me is arbitrary.

Ms. Fussell: If I understand you correctly, we would like to make a distinction about the type of services. We would not be in favour of the provision for the nursing home to provide extra services at a cost to the resident of taking the place of services that should be provided to all residents anyway.

Mr. Andrewes: Exactly. I am not disagreeing. There is no disagreement. What the Minister talked about the other day is this special program, and I think our concern is that any special program should be available to every one of the residents in all 330 nursing homes if, in fact, the nursing homes make application for these programs.

Ms. Carden: I would agree in accordance with the individuals' needs in the facility.

Mr. Andrewes: Okay. The other aspect of that, you indicated that that amendment must not allow the nursing homes to provide services to the community, such as meals on wheels and day care. Could you comment on that?

Ms. Fussell: Because it is just the first step we found that if an institution begins to provide service to people in the community, and it is a small step between that and the individual who is receiving those services, needing more services and moving right into the institution. We would like to see a new approach, and this new government has the opportunity to take a new approach and start developing services in the community. They are not big funded institutions. We have had four decades of basing services on institutions.

Mr. Andrewes: I understand that the amendments

instilled by the Minister were to try and make a nursing home truly a home and part of the community. Do you not feel that by prohibiting a nursing home from delivering any kind of service to the community that it runs contradictory to the philosophy of the amendment?

Ms. Fussell: How about countering that by involving the community in the nursing home and involving the residents of the nursing home in the community, but that's not the same as having the nursing home providing services to the community. We are not saying that the community shouldn't come into the nursing home and participate in activities and visit residents and bring residents out into the community to participate in community activities.

Mr. Andrewes: I have not heard you say that. I didn't suggest that you said that. I am suggesting only that part and parcel of the nursing homes involvement in the community might be the delivery of certain services, and I don't see how you can separate the delivery of services from trying to involve the community in the activities of that nursing home.

Dr. Jorgensen: In the capacity as a nursing home, do you mean, or do you mean another body--

Mr. Andrewes: In its capacity to perform--

Dr. Jorgensen: --under the same--

Mr. Andrewes: In the capacity to perform certain services that the community--

Ms. Jorgensen: --as it falls under this legislation and is regulated in government by this legislation?

Mr. Andrewes: No. I am not too clear on what you mean by that.

Dr. Jorgensen: Yes. In a capacity as a nursing home it would be providing these additional services as it is governed by this legislation or some other things might be run out of the nursing homes in the operation?

Mr. Andrewes: In its capacity in part of a community with an ability to perform certain services to that community, currently does not matter?

Ms. Jorgensen: What is on that --

Mr. Andrewes: Yes.

Dr. Jorgensen: We disagree.

Mr. Andrewes: We have come to the question of service

contracts. You say service contracts should be negotiated upon admission and annually thereafter. I would assume you are implying that service contracts would need adjusting depending on the residents' needs in the community?

Dr. Jorgensen: Yes.

Ms. Fussell: Absolutely.

Dr. Jorgensen: That with a form which sets out certain conditions and then there are other things that are subject to negotiation for change.

Mr. Andrewes: I would just like to quickly, Mr. Chairman--

Mr. Chairman: Fine.

Mr. Andrewes: --touch upon the supplementary indicated sometime ago that -- institutional programs for the last many years is home care and institutional programs.

Ms. Carden: May I?

Mr. Chairman: Miss Carden.

Ms. Carden: I think we are referring to the preponderance of the imbalance in the system. If you look at existing community services, they don't go nearly far enough to meet the needs both in terms of incentive service as well as flexibility and the range of services.

In Ontario today we have a -- of residential alternatives to institutions, and to quote very, very publicly available information: "Ontario institutionalizes more people than most other jurisdictions", and those are the kinds of things that we were pointing to when we made the previous statement.

Mr. Chairman: Mr. Andrewes?

Mr. Andrewes: Just briefly, you suggested in section 17a-(2) the words, "unless the other person acts maliciously or without reasonable grounds," be struck, and in your view that is a deterrent to individual reporting. Why is it a deterrent?

Dr. Jorgensen: We have had a great deal of discussion about our recommendation with various people, including crown attorneys who suggest that we are wrong to object. We want to encourage the reading of complaints, and so on, and we are concerned that it would have an impact on some of the reading and that they might not complain, and we want that on the record, that that is something we -- But we, of course, wouldn't want to have false and malicious complaints

from being read, we are just worried that it has been incorporated in the--

Mr. Andrewes: 17c-(1), (2) and (3). That all deals with financial statements and accountability. You compare a nursing home to a public utility in terms of financial accountability and reporting.

Mr. Chairman: What went on at Consumers' Gas is in this, too.

Mr. Andrewes: I have some difficulty with that. We feel they are in a monopolistic situation. Are you making that comparison? Do you view nursing homes as an monopoly?

Ms. Fussell: We are making the comparison primarily because both public utilities and nursing homes receive a mix of funding directly from the public and from the consumers.

Mr. Andrewes: Right.

Ms. Fussell: --it seems in the public interest that when millions of dollars in public funds are being spent on a service that we know that the service is being provided, and that the money is being spent on the service.

Mr. Andrewes: In the role of public utilities, the utilities are guaranteed a return on their investment. Would you apply the same logic to the nursing home?

Ms. Fussell: We are not in favour of for-profit nursing homes.

Mr. Andrewes: Thank you.

Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Andrewes.

Thank you Concerned Friends for your presentation. Will make available to you at the earliest opportunity the amendments and some of the draft regulations as have been suggested, and I will see you back on Tuesday morning next for your comments, specifically towards those new amendments.

Ms. Fussell: Thank you very much, Mr. Chairman, and members of the committee for the opportunity to speak to you today. We do hope that you will consider very carefully our suggestions when you do formulate those amendments because remember it is in the interest of the resident that we speak.

Thank you.

Mr. Chairman: Thank you.

We will adjourn until 2:00.

--- The Committee adjourned at 12:10 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

WEDNESDAY, FEBRUARY 25, 1987

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

McLean, A. K. (Simcoe East PC) for Mr. Baetz

Also taking part:

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Carrozza, F.

Witnesses:

From the Ontario Medical Association:

Boadway, Dr. E., Director, Professional Services

Genesove, Dr. J., Chairman, Subcommittee on Geriatrics

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, February 25, 1987

The Committee met at 2:04 p.m. in room 228

Mr. Chairman: I call the meeting to order. We're dealing with Bills 176 and 177. It is five past two by my watch rather than by the clock here.

For the members, I'd like to welcome our last deputants in the public hearing section of this -- the Ontario Medical Association -- Mr. Boadway and Mr. Genesove -- or Dr.'s, rather. I'm giving other people doctorates and taking yours away; it hardly seems fair.

Dr. Boadway: That's okay, Mr. Chairman. We were both misters before we were doctors.

Mr. Chairman: I'd like to just tell you a little bit about how we operate. You make your presentation any way you would like and then I open it up to questions following that rather than interrupting your presentation for questions during it. I gather you don't have a written presentation, but you may want to make some oral remarks.

Dr. Boadway: That's true.

Mr. Chairman: Which is which? I guess I should ask for Hansard's sake as well as my own.

Dr. Boadway: Thank you very much, Mr. Chairman, for having us today. My name is Dr. Ted Boadway and I'm the Director of Professional Services for the Ontario Medical Association. And I might tell you that my medical background is that of a family physician in community practice for many years before I joined the staff of the Ontario Medical Association.

Dr. Genesove is with me today and I'm going to let him give you his own degrees when he begins to talk.

Mr. Chairman, we are pleased that the government has seen fit to open up this Act and we feel there is much that is commendable in doing such. It's clear that the Act needed to be opened because there are many issues with regard to the residents that needed to be addressed. And it's clear that the system of care is strained really to its limits, and in some areas perhaps beyond reasonable limits, and it is wise for the government to address such a system at this time.

Mr. Chairman, I suppose it's usual that at such times

groups coming before you tend to dwell upon the areas of their concern rather than their areas of concordance, and I guess that I'm going to be entirely guilty of that sin and I will apologize for it in advance. And we do have some concerns about this legislation and particularly the way it's going.

Our concerns are chiefly that this legislation does not address the real problems that are faced by the residents and the care givers and indeed perhaps by the government in the provision of nursing home and chronic care in this province at this time. This legislation does not address most of the needs of the residents.

Residences have many needs, some of which are personal, many which are physical, some of which are psychologic, regligious -- a full variety of needs. One of the most pressing ones that residents face at the present is the need for adequate fascilities. And adequate facilities is not just a physical building; adequate facilities involves the whole spectrum of the premises, the system of care delivery, the people who deliver care in that institution and the attitudes of those people that deliver care, because at the end, it's attitudes and personal drives which makes most systems work or not work well at all.

And our concern about this legislation is that some of the most pressing of those needs this legislation does not address. I believe that there is a need for an assessment of resident needs on an individual basis, and we need to assess residents' needs in a way which is open for all people to understand. It is not enough to say that we would like some discretion in how we might manage, but rather we need to be responsive to local needs.

For example, one of the problems we face in the nursing home and, in fact, through the entire chronic-care system is the change of status of residents. The change of status is under a couple of categories. First, the difficulty of care that's required for patients has increased year by year as the population is inexorably increasing in its age cohorts. Therefore, we're dealing with an older - progressively older - sometimes more disabled group.

So that's one way it's changing. It's followed the societal changes, which we've all come to understand and expect. On the other hand, within nursing homes and chronic care institutions, patients change, and although they may be admitted at one level of care over a period of time, it's understandable that their physical needs alter and unfortunately they usually alter in the direction of more care.

And as that happens, there is a need for reassessment.

What happens is that in the institution more and more people are achieving a heavy care level. And as that happens, there's a need for reassessment of what those residents need, and I believe that this reassessment should be on a continuous and ongoing basis so that each institution has a concept, a real handle, of what the needs of those residents are from month to month and year to year.

And I believe this method of assessment needs to be open to all. It needs to open so that physicians understand what their role is in it, that other members of staff in the nursing homes or chronic care institutions role is, so that the patient understands what the system of assessment evaluation is, so that their relatives and public at large know that there is a mechanism whereby their needs may be re-evaluated and their needs appropriately met. And at the time, such a system does not exist in nursing homes, such a system does not exist in chronic care institutions, and it should.

If we leave the assessment of these things perhaps to Ministerial discretion or other systems which are not open, then they are done in the closet. Things which are done in the closet are not necessarily responsive to the needs of the individuals where they live, and local needs is what we must meet because the needs from nursing home to nursing home vary considerably.

In that respect one must decide what the role of the nursing home is. If the role of the nursing home is only to serve one level of care need, then that should be stated. But, when we see physical and mental progression over a period of years and the needs of the resident change, we have to decide how we're going to look after them. Is it appropriate at some time, having defined that a nursing home gives one kind of care, that we should then transfer the patient to chronic care?

But if you look at any nursing home, and I'd suggest almost any nursing home - certainly any I've ever been familiar with - a very significant percentage of patients in that nursing home justly deserve a chronic care status recognition. And perhaps in most any home, perhaps 20 per cent - and I've heard statistics quoted as high as 30 per cent in any home - could justifiably be called "chronic care."

But what do you do with these people? That is the conundrum. Where do you keep them? Do you dislocate them from the home they are in and put them in another institution? But if your institution is only suited to give one level of care, that is a crunch decision with which everyone is faced.

On the other hand, you could make a decision, Mr.

Chairman, which said, "No, we don't want to relocate people. What we want to do is keep them in the surroundings with which they have become comfortable and familiar." In that case, it's incumbent upon this government, or any government who faces these problems, to give these institutions the facilities in the broad sense I first described such that they can provide the care needs of these individuals.

I don't think nursing homes are unwilling to provide for chronic-care people, but if you don't provide adequate facilities, how can they? What actually happens is this: You have people who require this much care, perhaps six or eight hours of nursing care per day, but there's a total overall budgetary allocation for nursing care. In that nursing home, if this much care must be given to these high-care needs people, it must be stolen from somewhere else.

And so people who are at the lesser end of the care needs justly complain that they, in fact, are denied all the care that they need because the staff, faced with the pressing needs of some, find it difficult to balance this and respond to these pressing needs and sometimes there is not enough left over for others.

However, if we were able to assess the needs of these individuals, and so if you had enough staff to provide for the heavy care and were able to balance that with the provision of facilities which included quality staff, then I would suggest the needs of all of those residents could be met. But at the present time, chronic-care patients have the capacity, and in fact do, because of their true needs, take from the needs provision to other residents.

In fact, Mr. Chairman, because the legislation is silent on the issue of these needs of residents, the true issue which is straining the facilities of chronic care and nursing home institutions, I conclude that this legislation is perhaps callously indifferent to these needs of the residents. Until it is addressed, until there is a true approach to this, we find it difficult to believe otherwise.

Mr. Chairman, I'd like to address the issue of staffing in institutions such as these. Much of this would be applicable to any institution delivering health care. My own personal experience and that of most of my colleagues is that most of the staff, the vast majority of the staff, in these institutions are loving and caring people. In fact, my own assessment is that it requires a very special kind of person with a special dedication to work in a nursing home.

Many people who are very much attracted and suited in their personality and drive to the hurly-burly of the intensive care unit or the emergency ward do not like working in nursing homes. Their personalities are not

suited. And that's true for physicians and that's true for nursing staff and I think it's true for everyone.

And, in fact, you find that the system filters itself so that people end up being attracted to a type of care which suits their personality needs, and that's a good thing. But the people who end up working in these institutions have a particular capacity for love and care of this type of people, and this type of care is difficult, arduous care. And the bulk of the work is not done by physicians; it's done by RN's and by aides. In fact, perhaps the largest bulk of the work is done by aides.

Dr. Genesove is going to talk about the particular role of physicians in these institutions. But physicians have a medical role, and that is not the bulk of the work which is done in these institutions.

And our concern is how do you nurture and foster loving and caring and personal dedication in this kind of institution? We're anxious that this legislation, in fact, introduces an element of adversarialness into the institution where these people are expected to work. This legislation appears to take an attitude of policing rather than nurturing. This legislation appears to put staff in a situation where they will spend the majority of their time looking over their shoulder perhaps wondering where their adversary will come from and with what they will be loaded and how their personal life might be affected by such events. I would suggest that fostering an environment, an attitude, a pervasive ethos of hostility and suspicion is not in the best interests of patients, residents, of the staff or of any person involved in the entire system.

I would suggest to you that there are things at the present time which affect the loving and caring attitude of the people who work in these institutions, and the single most corrosive element affecting the loving and caring attitude of people in these institutions is overwork.

The factors I cited before with increasing patient load without increased recognition for this, without increased recognition for the need to improve facilities in the larger context that I described before, means that these individuals have a high burden to carry, and it's very difficult to maintain the loving and caring attitude and to find the time for that when you're simply chasing yourself to look after the physical needs of this moment and with this patient and with all the patients down the ward.

And this is what has the greatest potential for deterioration in the loving and caring attitude, and this legislation does not address the very real care needs that are causing this situation. These are needs, therefore, which not only are there for the resident, these are needs

which are there for the caregivers of those residents to maintain their ability.

So we're talking about creating enough staff, maintaining the quality of staff, a level of dedication and caring which cannot be achieved through legislation. You cannot achieve loving and caring through that type of approach but rather providing an environment in which it is fostered.

Mr. Chairman, I'd like to ask my partner, Dr. Jack Genesove, to continue on at this point, if I may.

Dr. Genesove: Mr. Chairman, I'm a family physician, perhaps a little long in the tooth. I chair a special committee, sub-committee of the geriatric committee of the OMA on nursing homes, and I am an advisory physician in a nursing home. Our committee has developed guidelines in conjunction with the Ontario Nursing Home Association for advisory physicians and for attending physicians in nursing homes.

I intended to read these to you, but there is no purpose in that because Ted is quite right: we're not all that important. We come in fairly frequently. The last statistics I saw from OHIP indicated that the average resident in a nursing home is visited up to four times a week - 50 per cent of the residents are visited up to four times a week - by their physician. And this has been an increasing thing because these people are sick. My God, there's an average age of 85.

We aren't the important people, and perhaps I could put this most succinctly in something that happened yesterday, and that could exemplify almost every day. Yesterday a patient in my nursing, the nursing home in which I work-- We tend to get proprietary of these things.

Dr. Boadway: One get's possessful of these things.

Dr. Genesove: --was walking down the hall who had Alzheimer's disease, which is I guess the disease that I personally am most fearful of, and she held out her hand with a little towel in it, and the RN that I was making rounds with relatively quickly said to a nurse's aide down the hall, "She's got some feces in her hand."

It's not unusual, Mr. Chairman. The nurse's aide had to clean that up, take her gently by the hand to the washroom and clean her, go back to her room, find where the rest of it was and clean that. When was the last time any of you did that? I certainly don't. I'm way above that; I've got a medical degree.

Mr. Jackson: I've got a ten month-old daughter.

Dr. Genesove: Let me tell you it's a lot less distressing. I've done that for six of them and I've got eight granddaughters - children - and my kids think I ought to do that for all them, too. That's nice feces; it's dirty feces when it's from old people. Believe me.

So, that's what they do. Ted says they are special people. I'll tell you what they are. They're blacks, they're orientals and some white. And the terrible thing is for some of our worst, illest people, they're "black bitches" and "dirty chicks." And they hear that and they shake their head a little, and they smile and they pet them, and they say, "Daisy," or "Mary," -- whatever, "you shouldn't say that."

That's who you're dealing with. You see these are the people and this is what this 17(a) threatens. These are the people who, when I walk into the home I work in - my home - and there's been a big headline about the terrible, terrible neglect in nursing homes and abuse by somebody, these are the people who have sort of a pall upon them that day and they're not singing so much. And the damn newspaper with the headline is already put up there for everyone to see. And all of a sudden they're criminals. And why shouldn't they know they're criminals; they've been told all about criminology and then you're not going to (knocks desk repeatedly). No doctor is very likely to be informed upon for beating up someone. Well, who does these things? You might as well come clean on this.

I don't know if you've asked the Ministry what they do with incident reports but there's an incident report on every incident. The facts of life. It's not these poor people; it's not these workers. It's not these people getting up at 6 or 5 in the morning and coming to work at 7 and phoning their kids at home at 8 to make sure they go to school, that are doing this. Ask the Ministry to show you the incident reports; there's one or two every day.

The facts of life are that a poor, sick soul who is jostled or has somebody walk into his or her room, doesn't have the control of his temper that you and I hope we have. And so they push and they slug and they shove and people fall down. If you've been in a nursing home ever yourself, of course it happens. But how did you stop this? You'll never completely stop it, but if you've got three people on the floor with forty residents, and one extra person to keep an eye on that most restless person -- But don't you see, this is what frustrates it.

We're not asking you for a cat scanner. We get that. I can get money for high, you know, stuff. These people don't need cat scanners; they need somebody to look after them. And all this kind of thing does, all this kind of

thing does is tell these people who are not in a part of our society that gives them the greatest pride. Tell them that they really are just exactly what the residents are calling them. What - forgive me - a minority of residents are calling them.

Well, you know I had some hope. I had some hope for government in this thing when I saw the Woods-Gordon Report; I assume you people have all seen the Woods-Gordon Report. The Woods-Gordon Report, I thought made sense. It said there are nursing homes that aren't great. Inspect them closely, carefully; watch them; close them off if you have to.

They said the great majority of homes know much more about caring for people than our average inspector who, again the Woods-Gordon Report said, are not well trained. Turn your inspectors, for goodness sakes, into consultants. Let them go into the home not as adversaries, not as somebody trying to look for points, not as an inspector for the accreditation program.

Some twenty-five years ago I was, I guess I was deputy head. There's no problem going into a hospital and knocking off thirty-five recommendations. You can look at the flaws anywhere; any idiot can do that. The trick is to make recommendations that make sense and can help.

I had hoped that there would be something in here that said, "Make consultants out of your inspectors. Stop them being inspectors except where you really need them." You're not looking, for goodness sake, into a bakery; you're looking into a place where people need care. You can't do it by being the enemy the minute you walk in the door.

I guess the other thing that bothers me about this Act is the development of what I guess is called an "adviser," that is the famous advocate.

I went into this business I guess in 1937 -- something like that. Didn't expect to make much money out of it because doctors in Toronto, some of them were on welfare. I, honest to God, went into it because this was a way that you did good things. Didn't matter that I was a Communist then anyway; I learned better.

I've never seen a nurse - I have two daughters who are nurses - who didn't go into the business saying, "I'm going to help save humanity." Everybody I know in this business thinks they're there to help the patient. I know I'm my patients' advocate, and I know that the nurse on the floor and that same nursing aide who comes up and says to me, "Dr. Genesove, Mrs. Jones has got something on her arm" and makes damn sure that I go see Mrs. Jones because she's worried by her; she's the patients' advocate.

Now, what do you do to us and what do you do to them when you turn around and say, "We've got somebody else in here who is really going to be the advocate because you damn well are the enemy." And I want you to think about this in terms of what you've got written. It's legal; it's nice. But legal stuff comes out in a way that us unsophisticated people don't understand.

And what I understand about this is that you have decided, really, in your wisdom, that if you can put a little money in, you will put in somebody to interpose themselves between that nursing aide of mine - between the RN and the nursing assistants and the director of resident care and me - to make sure that we do our job properly. And that if we think a patient ought to get his medicine, if he needs a little bit in independent advice before he takes his diuretic or before he takes his mood changer. You've got that in there, but you've got to decide whether you really think that society and medical care should go in that direction, whether you really believe that everything you have seen is indicated -- that policing somehow makes a better society. You know this better than I, I'm sure; that's why you're here. But you know, my instincts are against it. I'm sorry I took a long time.

Mr. Chairman: Thank you, Doctor, very much. We have questioners already lined up. Why don't we get started. Mr. Jackson.

Mr. Jackson: First, I'd like to thank you for your presentation and I would hope that we'll be able to get a transcript of that as quickly as possible. Having listened to your presentation, it didn't really lend itself to a written transcript; so I appreciate it that much more.

If I could get to the issue of a matter Dr. Boardway first raised and I think Dr. Genesove was alluding to as well, the concept of maintaining the quality of staff and feeling of staff self-worth and so on. You're really talking about funding and about what -- I mean, the closest analogy I have is in education where you talk about the teacher-pupil ratio, we have the patient-aide ratio. Is that a primary concern for you at this point in time from your experience, and do you feel this legislation should be addressing that as a more priority need for the system we're talking about than, say, some of the other elements which the Bill is addressing?

Dr. Genesove: I think if you're being honest with yourself, you have to know that you can't squeeze the box tight and not have a sleeve come out. There's only a limit - there is a limit - what these people can do. The budget, I understand, is forty-eight bucks a day. Well, I've got a patient on home care getting two shots of

insulin - that from a visiting order nurse - and that costs more than that -- twice a day.

So sure. My nurses' aides are not sitting around doing nothing; they're working like mad and they get tired. I'm amazed they don't get irritable, but they don't somehow. There has to be enough. When that poor lady started walking down the hall, somebody should have been there long before she got to us.

Mr. Boadway: Mr. Jackson, if you have a home in one area - a nursing home - which would have 10 per cent chronic care overburden which would commence straining of any nursing home facility and they'd hope they had a bunch of light care patients to make it up - they may not be so fortunate - that would be one area of consideration. They might be able to make it up.

Suppose you had another nursing home which had a 30 per cent overburden of chronic care patients 40 per cent, then unless you recognize the difference between those homes and you have a mechanism of assessing them, and then recognize the difference, which will change with time but not rapidly - it's not the kind of thing that changes in a home by one week; it evolves over a period of time, and then it may regress, too - then if you have a mechanism of recognizing the differences, you can say, "Yes, for this home there's one level of funding; with another home we provide a different kind of funding."

Mr. Jackson: What I'm sensing is, if I can continue with my education analogy, you're looking for a differentiated PTR for purposes of funding?

Dr. Boadway: Well, the differentiation of patient needs isn't all that startling a concept. I don't want you --

Mr. Jackson: I'm not putting a value on it. I'm just trying to get it clear. I mean that's really what you're talking about?

Dr. Boadway: Yes; that's one way of saying it. We already do that, so it's there. It's not very stunning in its conception.

Mr. Jackson: Okay. Could I ask -- Mr. Chairman, I'd like to ask the Parliamentary Assistant if I could.

Dr. Genesove made the reference to the -- or graphically illustrated the case of staff abuse, and then he tied that into a question with respect to Section 17 and the reporting mechanism. Could you please tell me what your understanding is of your Bill as to how the Bill would react to that situation of a case of patient abuse of staff?

Would you please just run me through that example and how this Bill deals with it so it's more clear in my mind what we're doing with this Bill.

Ms. Hart: I'm not entirely clear about your question. If a patient abuses a staff, is there anything in the Bill that gives that staff member any rights; is that what you're asking me?

Mr. Jackson: I'm asking, how does the new Bill, the one we're working on -- Who reports to who and what happens?

Ms. Hart: Yes, I understand. It's not covered.

Mr. Jackson: It's not covered at all.

Mr. Callahan: The criminal code would handle that, I guess.

Mr. Jackson: Dr. Genesove, you talked about turning inspectors into consultants. Could you expand on that a little more, if you wouldn't mind, with respect to these advisory councils and the advisory committees which are proposed in the Bill and the possible --

Mr. Boadway: I'm sorry.

Mr. Jackson: That's fine.

Dr. Genesove: I'm under the impression that all or almost all of the homes have residents' advisory councils now, so this is not particularly new. My concern is, in fact, the role of the adviser to the residents' council -- and I use the word "advocate," if you will, because clearly this is what you're talking about -- as a person, in essence, interposing themselves. Because you must bear in mind who are going to be a residents' council.

If, in fact, in the average nursing home we have an increasing load of people with mental incapacity, the people who are presently going to be in a residents' advisory council are the most with-it people, and their needs are going to be a little bit different than those of the average resident -- unfortunately, but it's true.

Sometimes they're very tolerant; sometimes they are a little intolerant of residents who are confused because they're fearful of the day that they're going to become that. One of the greatest fears people in nursing homes have, "Am I going to get to be like this woman down the hall that keeps wandering into my room?"

Mr. McLean: As a supplementary on that -- representatives to qualify or be able to be on that advisory council --

Dr. Genesove: I don't know who's presently on that council. I think we'd be very fortunate if 35 per cent could play a meaningful role, and of those, maybe five would clearly dominate. I would think that any person who came into that council in a sort of advisory capacity would dominate it in most places in no time flat.

The present lady who's chairman of our council is a lovely lady and quite bright, but she's had the stresses that everyone has had. She had her husband with her and he's become sicker. It makes it harder for her to act that way.

I don't doubt that if you brought in this system and if government, in their wisdom, appointed people who might have their own agenda -- And when you're looking for something that you appoint people to, you generally have to look at who volunteers. You're all into this business so it's not new to you. If you have somebody who has their own agenda, you may find, in point of fact, the development of areas of conflict. I see the Chairman smiling; the Chairman knows who would immediately volunteer, and I think most of you know which group would mostly volunteer. I think you could see disaster in some of the homes.

Mr. Jackson: If I could continue, I'm intrigued by your concept of the inspector becoming involved. This morning we heard from the Concerned Friends of Ontario Citizens in Care Facilities and they echoed the identical concern you've just raised about the residents' council advisers being on the government payroll and who's serving who and whose independence would be questioned.

But I think that strikes the point you've raised about turning inspectors into being co-active consultants as opposed to winning a certain number of points for finding flaws in any given system. And I guess that's basically -- You're reiterating the point, but they go on to say that they feel that Section 17(f) should be stricken out completely. Do you have a recommendation for an alternative, an advocacy structure within the system?

Dr. Genesove: It has been my impression that the people within the home do find themselves as advocates. Let me tell, Mr. Chairman, that over the years on more than one occasion our particular administrator or resident care person has had to phone the public trustee and see to it that the fiscal rights of a person were cared for.

Mr. Jackson: Well, I don't question that you know the personnel who could best advocate; what I'm asking you is to help us put that in the form of a structure. We have a political problem here and the political problem is that one or more political parties feel the necessity to make a

statement about the need for reform, and therefore this legislation is going to proceed. All we're able to do is reshape and hopefully tailor it to meet the needs that we are supposedly set out to be assisting.

So that's why we'd like you to, with your background and your close involvement in the area, if you saw a structure - I'm looking more at the process; I'm not quarreling with you in terms of who the personnel might be - but I need your assistance in helping put that into some form of structure for me.

Mr. Callahan: Mr. Chairman, if I could correct something. I think my friend said that the last delegation this morning said that 17(a) should be struck out--

Mr. Jackson: 17(f).

Mr. Callahan: --struck out. No, that's not correct; the one that they suggested should be struck out completely, was 17.4(a). 17(a) they suggested that there should be a change in wording and a change of the onus on --

Mr. Cooke: Mr. Callahan, I think that what was said this morning was that the residents' council advisory committee and the residents' council adviser should be struck out. It's one occasion I agree with Mr. Jackson.

Mr. Chairman: Let's leave that for Hansard and posterity.

Mr. Jackson: I've quoted directly from the report.

Mr. Callahan: Was 17(a) that --

Mr. Jackson: 17(f) is what I stated and what I read from the report.

Mr. Chairman: Did you still follow up with the question that was after?

Dr. Genesove: Mr. Chairman, I might say that I'm just a beat up old general practitioner, and I'm honoured to be asked.

Mr. Jackson: What would you do about Bill 94?

Dr. Genesove: I had no problems with Bill 94, Mr. Chairman; those were your problems. What I would suggest is that if you are prepared to modify this so that the business which is already available to the ordinary inspector does not become the business of someone outside not appointed by the family, not --

Again, if you look at the volunteer programs in most,

if not all, homes to the point of fact to see whether a residents' council might well have an elected representative from the volunteer program, I would suggest to you that that is a source of people - no axes to grind - people who come in again because they have love and understanding.

I don't know whether you've had representation from them or not, but I would suggest that there is an area of people who have proven their concern in a good physical way, and I would think that an elected representative would be one of those. But without, Mr. Chairman, payroll records? Why? Drug records? Medical records? The right to see whoever? But I would think that using those volunteers to that extent could be, well, a very useful purpose.

Mr. Cordiano: A supplementary, Mr. Chairman.

Mr. Chairman: Yes, Mr. Cordiano.

Mr. Cordiano: Very briefly, as you say, the importance of having people involved with nursing homes from the community, and you're saying that these can be selected from volunteer groups. What sorts of volunteer groups did you have in mind? That are already part of the nursing home activities, or --

Dr. Genesove: To my knowledge, the great majority of nursing homes have organized volunteer groups. There are also unorganized people who come in by arrangement through the activities' directors, et cetera. But there are organized groups who plan occasions for the residents. We have one group that run a Thursday night dance with a bar.

Mr. Cordiano: So you won't object to a seniors' organization or women's association -- There's one group that came before the Committee, this Committee, suggesting that we look at proposed various organizations that are active in the community and people that live in that community.

Dr. Genesove: Mr. Chairman, you'll forgive me if I don't want to get drawn too far into this. The suggestion I made was people who actually volunteer in that home know the problems of the home, have made a contribution to the home.

I have great respect for seniors' organizations, Mr. Chairman - I travel down metro for 50 cents - but I think that my suggestion here would clearly be that you focus in on people who have shown a practical interest in the home, one without an axe to grind, if you will, a group that knows what's going on in the home.

Dr. Boadway: Mr. Chairman, if I could respond also. To differentiate groups perhaps in your mind, there are groups which everyone recognizes as community-active groups;

they, in fact, tend to have a fairly high profile some of them, and you would be familiar with many of them.

What Dr. Genesove is alluding to is groups that you wouldn't be aware of. They are not sort of high activist groups; they are people who, in fact, have a very high level of commitment; in fact, often have a high level of activity, but it's not in the public presence.

Every nursing home I've been associated with - and that's been quite a few - and many I've known about that I haven't personal association with - has had a very large group of people who are the people who come in and help feed those who are unable to feed themselves.

There are a group of people in that home; they usually have a relative in the home and sometimes they had a relative in the home but that relative has perhaps passed away. They continue an interest in the home; they keep going in. They're involved in activity programs for them.

In one home I went there was a man who for ten years had come in every Tuesday night, except the weeks, he was on holidays to have a sing song. He played the piano and sang with the residents for two hours and led them in that kind of activity, and that was his contribution. Nobody recognizes that outside of the home, but that was his continued contribution.

There are a lot of people like that, I suggest to you, in every home with no public profile, but those are the people who have demonstrated personal commitment and a level of caring and loving which few of us really ever will.

Mr. Cordiano: So, the suggestion has been made - If I may very briefly, Mr. Chairman - these people might be retired accountants or retired professionals in various fields, what-have-you. In fact, they may be able to assist the work of the residents' councils and assist the work of the advisory committee and add to that committee in that capacity. So if not, your understanding is that those are necessarily the most appropriate people for that function.

Dr. Boadway: Well, it would be nice to draw on the wisdom, the accumulated life wisdom, of some people who have certain professional skills so that it might be nice to have a professional accountant who had spent his lifetime in the business, available to whoever if they were talking about those interests. But that doesn't necessarily mean they'd be the person who would be always the person most familiar with the internal needs of the residents, but they would certainly be valuable adjuncts.

Mr. Chairman: Thank you, Mr. Cordiano. Mr. Cooke?

Mr. Cooke: Thank you, Mr. Chairman. Thank you for coming before the Committee this afternoon. I think it's obvious from the tone of your presentation that you'd both be very good doctors to attend to residents at nursing homes and with seniors.

The difficulty I have with what you're saying is that I think you're suggesting to us that we should draft nursing home legislation that deals with the ideal nursing homes where they're not breaking the Nursing Home Act, where the motive is quality of care and the quality of life, and where there's not particular problems with staff. In other words, that the whole system in those particular homes works quite well.

Unfortunately, we have to draft legislation - as is always the case, whether it's speeding laws or whether its regulation of nursing homes - that are addressing the other situations that are not particularly good and legislation that will hold them accountable and catch them so that we can protect the vulnerable residents that reside in those homes.

If you look at the amendments in the current Act in that light, do you not see that there has to be a role where perhaps the inspector is not the consultant, but the inspector is almost a policeman.

Dr. Genesove: Mr. Chairman, I alluded to that in the Woods-Gordon Report, and I would think there is a situation in which close inspection would be necessary. I have some trouble being convinced that what I see here in 17 and in particular in the business about reporting abuse, that addresses a need that cannot be cared for by the Criminal Code of Canada.

Mr. Cooke: I'm sure that the Ontario Medical Association - I assume they did anyway - took a position when the children's legislation was brought forward that there should be mandatory reporting of abuse of children. Why would we treat adults or seniors in any other way than we would treat other humans. If professionals and staff individuals know that someone is being abused, all we're saying is they must report it. That's not been happening under the current circumstances.

Mr. Boadway: Mr. Cooke, as I hear you talk I hear your willingness and desire which is perhaps laudable, to address the issues of the least and the worst.

And I hear you say, "Let's catch them." And I suppose that puts you in your policeman mode and perhaps that's appropriate from time to time. But the vast majority of workers don't need catching out there in the health care industry; the vast majority in homes don't need catching.

And what I'm talking about is the number one problem in the care-giving system out there which, while you've decided to take a look at the nursing home care field, you haven't addressed. So where is it? If you have to be in a catch-them mode, at the same time you don't look at the real problems, is it because the real problems aren't sexy? I would suggest to you that the real problems are plain, role-your-sleeves-up, slug-them-out problems, which don't have much mass appeal at all. But the catch-them ones do. I'm quite prepared to talk about the catch-them mode if one is prepared to talk about the care mode.

Mr. Cooke: I don't disagree. Unfortunately, we don't get to draft the original piece of legislation. The original Amendment Act doesn't address the staffing problem, and neither does the Act. It's in the regulations, and as you know, we don't get to draft regulations as Members of the Legislature; that's done by Cabinet. I'm looking at some amendments that I'm going to put forward that I will hope will at least in some respect address the staffing problems in the homes.

Mr. Boadway: We'd be happy to work with you on addressing the needs, the care issues, of patients in nursing homes, and you can count on our one hundred per cent cooperation in doing that. Ask me; I'd be --

Mr. Cooke: The government has promised us a brand new Extendicare Act consolidating Extendicare in homes for the aged and nursing homes. Then the whole Act will be opened up and we'll be able to address some of those other issues. What we're faced with in this Committee, however, are the sections of the Act that are opened up by the Amendment Act.

Dr. Genesove: Mr. Chairman, let me put "abuse" in perspective for you.

Mr. Chairman: I can't hear you.

Dr. Genesove: Sorry. I have this lean-back feeling. And let me tell you another story; and the reason I tell this story is because, Mr. Chairman and Mr. Cooke, this whole damn thing is not in isolation. We have a problem with the system right through, and the problem isn't Bill 96, and it isn't you and it's not the very small minority of employees who abuse residents.

So let me tell you about a gentleman who I will call Mr. "A" because that's not his initial. That gentleman came to the home in which I work three or four months ago. He came to us from one of the provincial mental hospitals that are left.

You remember that in our wisdom, because we are so

smart, we took away sanctuary from thousands of people who should have gotten that sanctuary in a mental hospital. And we threw them out on the streets and we put many of them into nursing homes because it was cheaper there at that time to treat them there than in hospitals.

So he came to us. He had schizophrenia; he had schizophrenia for forty years. He'd been mostly in the mental hospital system. He had been brought in. The note we got said that he had been brought there to stabilize and he was now stable; he was a nice, shy man and if we were kind to him, he would blossom. And he was shy and he was frightened.

Many people with schizophrenia are very frightened. They're frightened of what they see because it's distorted. They're frightened of distances; they're frightened of cracks in the floor. So he was frightened.

Within a week or so, he suddenly turned on the most experienced RN I have, a person who knows how to handle people gently but firmly, and beat her and she was off for weeks. I've never before seen her shaken by an incident. She was.

Well, we thought this was our fault; we didn't really recognize how frightened he was. He walked around with his fists clenched. He walked up and down with his fists clenched behind him. And I spoke to him; I said, "Are you scared?" And he said, "Yes."

And I said, "You shouldn't have done that." And he said, "Well, I didn't see her coming." All she'd done was take his hand to lead him. And nothing happened for a few months, and I thought, Fine; we've got a handle on this person. That happens. Given a month we get a handle on somebody and things work out. Residents will die faster in the first month than any other time.

And then he slugged another resident hard -- beat her. So we called the police. That's our policy now; you've got it there. From the day we knew about this, we said we will call the police for assault. We will not have a family come in and find that their mother has been beaten and wonder if one of our people did it when we know who did it.

So we called the police, we called a psychiatrist. I filled out a Form 1. Form 1 is one that you fill out to send a person to a mental hospital. The only problem was the mental hospital wouldn't take him.

Now, our nice community hospitals have nice mental health units which are meant for nice middle-class drug addicts, mild psychotics -- that sort of thing. So my community hospital could only, if they took this man, put

him in a locked room. I didn't want that to happen to the man and temporized for three days until he hit somebody else. And I called the police again. He was taken to our emergency room, and reminded them, the community hospital didn't have a bed for him.

The police, after waiting six hours and looking elsewhere, took that man to jail -- to court. It took two weeks before he returned to a mental hospital. He was charged. His medications were lost two or three times in the process because everybody kept calling us for it. The judge kept it once.

Now that man was no criminal any more than those two five-year old retarded people were criminals. The system has no place for them. You took away their sanctuary. You decided that people working in mental hospitals were criminals and beat people. So you threw them out on the street or you put them in nursing homes and we can't handle them.

I could say we could have handled them better with one or two other people on the floor -- somebody who had taken him away from the room that he walked into -- quietly. But the system doesn't have that. And putting on a police statement for that won't work, won't help you. When you're young, you think you can do it that way. When you get a little experience you know you can't do things by policing.

Mr. Cooke: I don't share the same fond memories of the days that we used to have thousands of people in provincial psychiatric hospitals. I really don't see it that way at all. We haven't institutionalized people appropriately, I agree, in this province. But I sure as heck don't think it's a good idea to have five thousand people in St. Thomas Psychiatric or some of the other facilities where we've just packed them up and sent them out into the community and disassociated ourselves completely with the responsibility of dealing with our fellow human beings in our community.

I would suggest - I'm not going to ask any other questions - but I would suggest that the attitude that you're taking towards this Bill and the attitude that you're taking towards the seniors in our nursing homes in this province is completely paternalistic, old fashioned and out of date for 1987.

Dr. Genesove: Well, I am a paternal type. I've got eight grandchildren and I hope I get more. I would suggest that most of the seniors in this country might feel that they have a different view of their rights.

But I didn't come to debate. I don't want - and I'm must make this statement now - I was there when these places

were full. I was there when they emptied them. I was there in Saskatchewan when we did it right at the beginning. But we never thought that we'd skimmed down to the point where we couldn't get any poor soul - they're sick; they're not theories; they're sick - poor soul who needed protection given protection.

Mr. Chairman: Thank you, Mr. Cooke. Mr. Callahan?

Mr. Callahan: Sorry, Doctor; I was a few minutes late so I gather you and your colleague are from the OMA?

Dr. Genesove: Uh-huh.

Mr. Callahan: And I also gather that at least you have some connection with a nursing home?

Dr. Genesove: Uh-huh.

Mr. Callahan: And have had a connection with a nursing home over a lengthy period of time?

Mr. Jackson: Can I get to cross-examination, Mr. Chairman?

Mr. Callahan: I'm simply asking questions, Mr. Chairman. Can I inquire whether or not your colleague also has that long-standing connection with nursing homes?

Dr. Genesove: Yes.

Mr. Callahan: Okay. I come to this Committee and I hear briefs from a number of groups that we've heard from thus far, and they tell us that there is, in fact, a problem that exists in not all nursing homes but some. And they're not along the lines of your description of the lady who comes along with feces in their hand; they're more dramatic than that.

I have to wonder if you've ever seen that type of activity in the nursing you're connected with?

Dr. Genesove: Maybe you could be specific. I've seen most things, you know, but not everything.

Mr. Callahan: Well, the reports that we have are that in some nursing homes, and obviously it's the numbers that do a good job as compared to the ones who do perhaps a bad job; there's perhaps a wide divergence. But let's say a staff member either ignoring or by deliberate act or by no act at all, ignoring a senior.

Dr. Genesove: You know, I have a problem because I guess you did come in late and we sort of indicated that we thought it would be useful if there were more staff members

around. There's a two-phased -- Sometimes, sometimes - and it happens in all places - there are people whose illnesses are such that they say things repetitively and they do the same thing repetitively. And everybody in the home knows about that and every attempt has been made to try to find the cause or change the direction of the person. And the person still sits in the chair, for instance saying, "Oh, my God. Oh, my God. Oh, my God" or saying, "I have to go to the washroom. I have to go to the washroom. I have to go to the washroom," and she's been taken to the washing room already twenty minutes before you walked in.

That happens. It's very difficult to handle, and if you're within - you're a volunteer in the home and you've been in every day - you know who he is. But if you're asking me, I have heard of a terrible sort of thing, then Mr. Chairman, I can't respond to that. I don't even know if you're still beating your wife.

Mr. Chairman: I will recommend to members that they have two very long and full statements at the beginning, and Hansard should be available by the beginning of the week. And rather than being too repetitive about things that have already been dealt with, it might be wise to read Hansard.

Mr. Callahan: Well, I wasn't sure they had been dealt with.

Dr. Boadway: Mr. Chairman, perhaps I could help Mr. Callahan. It would also help if those name tags were so that we could see them and I would know who I was addressing.

Mr. Chairman: Unless we get to see them ourselves we get a little confused from time to time.

Mr. Boadway: Mr. Callahan, I think your comments are that perhaps there has been some evidence of real abuse given to you, and I don't think that anybody can or ought to try to deny that there has been evidence of neglect or abuse. It's clear that such has occurred.

Mr. Callahan: Okay. Let me take it from there then.

Dr. Boadway: But on the other hand --

Mr. Callahan: You have to let me finish because --

Mr. Chairman: I think it would be a good idea.

Mr. Callahan: I'm being rushed here.

Mr. Chairman: No you're not. You've got all sorts of time.

Dr. Boadway: There are also many instances of perceived neglect and abuse. And then there are instances where perhaps there has been neglect, but it's been a symptom of what I talked about in my opening statement where there's been a problem where the staff has a huge demand on resources here, and they sometimes can't give the care over here that they would like to give or ought to give. And they have to make very difficult decisions at that time.

And if I were an outside jaundiced observer coming in, I could truly say, "You know, your not giving that person what they deserve," and it's true.

But on the other hand, they're giving three times as much as they have over here and you've got to take it up somewhere. And that's why I'm recommending that the care levels of individuals be recognized.

Mr. Callahan: So I gather that - just so I understand this - that what you're saying is, you're saying that the root cause and perhaps the solution to this entire problem, without the necessity of this Act and some of the safeguards that are built therein, is simply to provide more money for more staff; is that what you're saying in a nutshell?

Dr. Boadway: No, it's not really in a nutshell what I'm saying. What I'm saying is we need to categorize the individual needs of patients in institutions and provide for them what they need where they live. And yes, in some cases that will require more money, because if every home is dealing with a heavy overburden of chronic care, there isn't much way of meeting that overburden other than providing the funds necessary to meet that burden.

And the problem we're facing is that all levels of institutions are having heavier and heavier care. In fact, if you look at chronic care institutions, I suggest they're even looking after heavier patients than they did ten years ago in my experience. And they're supposed to be chronic care institutions. But they had some flex too, and that's pretty well been gobbled up.

Mr. Callahan: Well, Doctor, I don't see any difficulty in 17(a). I might see some difficulty in that if I were a person who was attending at a nursing home, because I think I would have the concern that if I saw something and I perhaps didn't interpret it the right way or felt that I didn't care to get involved, and walked by it, that I might be a person who is in difficulty under the Act as it's presently proposed.

The Section itself is most inoffensive, I say. It's the same requirements that are needed if you're going to criminally charge somebody on reasonable grounds to suspect.

I don't see where that's terribly innocuous. All that does really is to allow someone to snitch possibly in a situation where it might be life threatening or certainly debilitating to a senior, and that if they snitch, they're protected from any repercussions by the people they're snitching on. I don't know see that as a terribly offensive --

Dr. Genesove: Mr. Chairman, I guess we have a perceptual thing and I think Dr. Boadway and I have both been over this ground before. And with great respect, I think we would feel that they were wearing out the other members of your Committee if you went through what we had already said.

So I am afraid your perceptions will have to remain your perceptions, and ours, I'm afraid, will have to remain ours. I would only suggest that we are not legal people and the majority of people who work within nursing homes are not legal people.

Mr. Callahan: No, but that's the reality of things, Doctor.

Dr. Genesove: It's the reality of things, Mr. Chairman, that I'm talking about.

Mr. Callahan: No, no. The reality of things in the past, and I'm sure you would be aware of this from your experience with nursing homes, is that if someone did, in fact, bring something to the attention of the outside authorities, perhaps certain rights were taken away or they were dealt with in a different fashion; is that an unreasonable statement?

Mr. Boadway: I've been involved in exactly those situations personally. I've witnessed, as a matter of fact, one of those very unpleasant hearings. And on me personally there was no retribution, but perhaps that occurs.

And if you're talking about subtle things, the day you can get away from all the subtle things that happen in interpersonal relationships -- you can't legislate them and you can't stop them. I mean, people are people and it is nice to provide people with protection, but you're never going to stop people from being people.

Mr. Callahan: I tend to agree with you there. Legislators can't legislate sympathy, empathy, caring, loving and all the rest of it, but I have to follow with the final question, Mr. Chairman. Do you think that those situations, those instances where seniors were, in fact, left in a bad situation or dealt with in a negative fashion and somebody brought it to the attention of the appropriate authorities and then wound up getting dealt with harshly

themselves, do you think that the addition of staff would help that problem?

Dr. Genesove: It's such a hypothetical problem. I don't know what you're talking about. I don't doubt that if a person turned around and said, "This aide yelled at this person" and brought it to the attention because it reached that -- brought it to the attention of the authorities that the other aides might feel that she was a little unkind to her friend.

This is possible and if you can tell me that the other aides might feel that she was a little unkind with her friend; this is possible. And if you can tell me that the legislation will prevent them from feeling that they weren't happy with her as a social person, that's quite possible.

I think for the rest of this, Mr. Chairman, I repeat we in our own homes now are calling the police for abuse. And that, I think, is the fairest way to do that. We know where the majority of abuse, sadly, comes from - sadly, Mr. Chairman - and we think we know how we can minimize this. We don't think that your Act will do anything except make an adversarial situation in a home where we want a caring situation.

Mr. Callahan: Thank you, Mr. Chairman.

Dr. Boadway: Mr. Callahan, there are instances where the staff...

Mr. Callahan: Yes, clearly. Would it change that situation?

Dr. Boadway: It certainly could.

Mr. Callahan: How?

Dr. Boadway: It could do it. First, of all there is a neglect, one, by overwork in other areas, and the only solution to that is staff allocation. Secondly, if there are a lot of staff around, it is very unlikely -- Let's take the worst case scenario. You have an abusive worker, a worker who is one of those terrible things we all hope to avoid in our entire careers; but you've got one.

Now, the chances are that that abusive worker is with a bunch of other workers. They're going to have constraints placed upon them by the very presence of those other workers who, goodness knows, aren't likely to be that way. So if you have other people around, that in itself is some kind of constraint. So yes, if you take five people and put them in one spot, it's unlikely that more than one of them would be bad.

And so, sure; that is one of the ways you could do it by providing more and better care.

Mr. Callahan: I wasn't going to respond, but I have to respond to that. Doesn't 17(a), in fact, tell those people who, up to now - it doesn't do anything for the people who have been following the rules and care and all the rest; they're going to continue the way they have been - but it tells those that are not that if you do it, then there are remedies and there are penalties.

Dr. Boadway: No, sir. Your question was about prevention, and I addressed your question of whether it would prevent, and the answer is, "Yes."

Mr. Callahan: You said a number of people standing around would prevent them from doing this, and I'm saying that with the law being in place it prevents them from doing it, too.

Mr. Chairman: There's no point in debating with the representatives before us. We're here to get information from them, and now it's turning into a debate.

Are there further questions for our deputants? I have nobody else on my list. Seeing none then, I would like to thank you both for coming on behalf of the OMA and making this presentation to us.

Dr. Boadway: We'd like to thank you for your kind, courteous reception. Thank you very much, sir.

Dr. Genesove: I do have these guidelines; perhaps they would be helpful for you.

Mr. Chairman: I'm going to make copies for all the members of the Committee and I appreciate that. Thank you.

Mr. Cooke?

Mr. Cooke: Could we just have a brief discussion on the schedule for next week?

Mr. Chairman: Certainly.

Mr. Cooke: And could we put forward any suggestions?

Mr. Chairman: Certainly.

Mr. Cooke: I talked to Mr. Andrewes and he actually is not going to be available on Tuesday anyway, so it's probably best that we not start clause by clause. I would suggest that what we could do is on Tuesday afternoon have the final presentations from the groups, which would then give us an extra little bit of time to get our amendments in

5-10
final form because the amendments I table on Friday are going to be draft amendments. There is still going to have to be some changes to finalize the wording. And then we could start clause by clause on Wednesday morning.

Mr. Cordiano: What is the agenda, Mr. Chairman? I'm not fully aware of the days we'll be sitting next week. I understood that we were not sitting on Monday but that we would be sitting on Tuesday.

Mr. Chairman: The suggestion that I was making this morning was that we would start sitting on Tuesday morning with hearings from the Nursing Home Association of Concerned Friends and the Coalition in response to the various amendments. What now is being proposed is that rather than meeting in the morning, we should maybe put that off to the afternoon to give people time to finalize amendments which might otherwise be in draft form when they get the various deputations. So we would be moving it up half a day.

Mr. Callahan: And we wouldn't start with the clause-by-clause.

Mr. Cordiano: And we would sit on which days?

Mr. Callahan: Tuesday at two and Wednesday at ten.

Mr. Chairman: And then Thursday and then we'll have the week following, as well, before the break.

Mr. Cooke: We're not sitting on the following Friday then?

Mr. Chairman: No, we don't sit on Fridays unless you want to change the --

Mr. Cordiano: I thought you said something --

Mr. Cooke: No, no. My draft amendments will be tabled this Friday. Even though the Committee won't be here, it will be tabled.

Mr. Chairman: I gather this meets with your approval, Mr. Andrewes?

Mr. Andrewes: I'm withholding comment, Mr. Chairman, because there was a suggestion that this would accommodate me, and I would agree it will accommodate me and I concur with the suggestion.

Mr. Chairman: All right. Well, it seems to me that just in terms of making sure that the three organizations have a chance to get the information out and the three caucuses get a chance to get each other's amendments, that sounds like a wise idea. So we will actually not reconvene

then until Tuesday next at 2 o'clock.

The Committee adjourned at 3:19 p.m.

CA20N

XC12

- 578

Governme
Publicatio

S-78



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

TUESDAY, MARCH 3, 1987

Afternoon Sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Pollock, J. (Hastings-Peterborough PC) for Mr. Baetz

Clerk: Carrozza, F.

Witnesses:

From the Ontario Nursing Home Association:

Nightingale, H. M., Executive Director

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Johnson, J. M., Director, Legal Services Branch

From the Ontario Coalition for Nursing Home Reform:

Steffler, V., Chairman

Wahl, J. A., Legal Counsel; with Advocacy Centre for the Elderly

From the Concerned Friends of Ontario Citizens in Care Facilities:

Fussell, J., President

Jorgensen, Dr. B.

Beattie, H., Officer

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, March 3rd, 1987

The Committee Met at 2:05 a.m. in Room 228

Mr. Chairman: This Committee is called to record. This hearing is on Bills 176 and 177, and that is the Nursing Home Act and the Health Facilities Special Orders Act.

Today we will be hearing from three of the groups that we have already had before us and they will be responding to the various amendments that the Caucuses and Government have been putting forward.

I will limit the discussion as much as possible to that, the discussion of the new amendments rather than the analysis that has already gone on about the Bills, and we have scheduled a half hour apiece for each group at this time. Unless I am instructed otherwise we will try to keep to that half-hour limit as well. All right?

So, our first group, if you have got the agenda before you, we have the Nursing Home Association, The Coalition for Nursing Home Reform and Concerned Friends coming before us. And we are going to start off with Mr. Nightingale and the Ontario Nursing Home Association.

Mr. Nightingale, please? The copies, all members have at the moment, and we will distribute the other copies to the press.

Well, welcome back. I hope you had a chance to review the various amendments and I realize that there are time constraints on all that in terms of analysis, but I think this time actually the members got them out in fairly good time.

Mr. Nightingale: Thank you, Mr. Chairman, for inviting us back to respond to the submissions made to the Committee over the past two weeks.

We hope that you agree with us that there has been a lot of valuable input and information given to the Committee, not only regarding the amendments, but with regard to the facts and the realities in nursing homes today. On the last point, we hope that the Committee has recognized that the initiative to update the Nursing Homes Act is an extremely important initiative for the government. It is the responsibility of Ontario's elected officials to help correct the fundamental problems facing nursing homes today, and this should be the Committee's primary concern.

Yet that is precisely what the proposed legislation has failed to do. The fundamental problem in nursing homes today is the growing number of older and frail residents whose care needs far exceed the capabilities of the nursing homes at their present staffing and funding levels.

Nothing in these amendments addresses the actual quality of care issue, the need to assess the care requirements of residents and to provide the staffing to answer both requirements. One of the proposed amendments states: "That every resident has the right to receive rehabilitation, reactivation and assistance towards independence and self care at the maximum level possible. To receive them in comfort and dignity, and to be provided with any assistive devices the resident might need to assist them in normal activities of daily living."

This is one example which clearly illustrates our serious concerns with the proposed legislation.

Once the resident is promised this right to enhanced care how can he or she be guaranteed this service if there are no added staff to provide it. The government's failure to address the basic quality of care issue raises serious doubts in our minds about the relevance of the proposed legislation.

Therefore, we believe that the government must withdraw these amendments and reintroduce amendments to directly deal with the quality of care for elderly persons in nursing homes.

This is the only responsible action the government can take. Trying to put these amendments into law -- as this Committee is attempting to do -- is irresponsible because the proposed legislation only deals with one part of the problem in Ontario's extended care system. We believe that these amendments as presented by the three parties will only aid and abet the current crisis in nursing homes. Changes here and there to various sections of the amendments will not correct the inherent weakness of the intent of the proposed amendments.

The intent, as we see it, is to deal mainly with enhanced expectations, controls and punitive measures. But the legislation, in effect, does nothing to provide for the residents' medical, social, and spiritual care.

As we and other groups have said, any changes to the Nursing Home Act must provide nursing homes with a clear mandate that states the type of resident care needs they are required to provide for and the exact role and function they are to play within the continuum of care and specifically under the extended care program.

Once the mandate is clearly established, government must provide the nursing homes with the resources to live up to that mandate. Never again do we want to be in the terrible and frustrating position of being publicly blamed for not providing proper care for our residents, when the real truth is that the nursing homes have been required to care for an increasing number of elderly persons needing a greater degree of nursing home care without the proper resources to do so. We were given the resources 10 or 15 years ago when the requirement of one-and-a-half hours of care a day was appropriate for the type of resident in a nursing home at that time.

Today, while we have been straining to look after people who are much more frail and older with the multiplicity of health problems, the government has let lapse its responsibility of providing adequate funding to nursing homes to care for this different elderly population whose average age is 86.

With this legislation the government is going to create expectations among residents, their families and the general public for improved quality of life in nursing homes. Government, therefore, bears a responsibility to help the people who run nursing homes to meet those expectations with funding for more staff.

We are sadly disappointed with these amendments because we do agree with some in principle: A bill of rights for residents; strengthening the role of Residents' Council; dealing with complaints immediately. As a whole, the proposed changes attempt to bring about a system of checks and balances to protect the interests and welfare of residents. Yet, within the fundamental care issue unaddressed, the system is left riddled with checks and no balances.

The ONHA has long been supportive of a bill of rights that can be effectively and fairly enforced. We agree with the principle of a bill of rights as long as the care provider is given the means and the resources to fulfil his or her obligations. We strongly believe, however, that the Ministry of Health should assume an active role in assuring the fulfilment of the bill of rights by acting as a signator to the contract of service between each resident and the nursing home.

In the United States many nursing homes which guarantee their residents a bill of rights receive either federal, state or state funding and/or have a total user paid system. In other words, most are given the financial resources to meet their obligations under the bill of rights.

Residents' rights should also be balanced with rights for the staff in nursing homes as well as the licensee. With the proposed legislation as it now stands, we see an adversarial attitude being fostered which will create even more problems, legal battles and red tape than already exists.

In addition, we also feel that the amendments are clearly discriminatory. If this approach is going to protect the rights of residents in nursing homes, why isn't it applied to all long-term care facilities? Why only nursing homes, when we now know that similar problems exist in acute and chronic care hospitals as well as homes for the aged. Don't patients' needs in these institutions deserve the same type of protection?

Recently in the legislature, Mr. Chairman, we heard the words of "two-tiered medicine", "universality" and "accessibility". Yet the principles implied by these words have not been applied to the care for the elderly in Ontario. Rather than progressing toward a rationalized model of care under the extended care program, a third tier of care is being created.

Mr. Van Horne, a Minister of the Crown has been given the responsibility for the rationalization of two systems - one under the Ministry of Health, the other under the Community and Social Services - each providing extended care with different funding models and different sets of standards. Through the proposed legislation the present lottery system of care will continue in which two different treatments will exist for the same type of resident, in two different systems under the same extended care program.

And during the two or more years before been the completion of Mr. Van Horne's study, and well before the recommendations even reach the implementation stage, the standard of care that residents in nursing homes receive under the Ministry of Health will continue to rapidly decline because of inadequate staffing.

We also cannot understand why the government will not set up an arm's length Board to deal with investigating all complaints in long-term care facilities. The creation of an advisor for the Residents' Council and their proposed powers has been opposed by almost every group appearing before this Committee.

An arm's length complaint review board is a much more constructive alternative which will accomplish the same goals with greater professionalism and accountability. Again, such a system should apply to all extended care facilities.

We do not object to financial accountability at all,

but we wonder what posting our financial statements will accomplish. Financial data says very little. What if a facility shows a loss? What steps is the Ministry willing to take where a facility continues to incur debt at the end of its fiscal year? Is the Ministry prepared to make financial adjustments to the facility? Is the Ministry prepared to underwrite the cost of arbitration awards as it has done for as much as \$51-million in the case of hospitals? Is the Ministry prepared to bear the cost of deficits as it did for hospitals two years ago, a cost of about \$300-million?

The posting of financial information belies the true intent of this legislation, which must be to ensure that the nursing home owner is utilizing its funds per resident to provide the best possible care for every one of its residents. And that, of course, goes back to the need to define the role of the nursing home, and assess the care requirements of its residents on an ongoing basis, with financial accountability built into the system. Which is exactly where the ONHA stands on this legislation.

There is little point in our critiquing all the proposed amendments if the spirit of the amendments is wrong, with only half of the issues being addressed. Put simply, Mr. Chairman, we want full checks and balances, an advocacy system for the residents, rights and responsibilities spelled out to all parties, and proper care for the residents in nursing homes.

The proposed changes, sadly, do not achieve any of these objectives. If the amendments proceed as set out, you will see a whole flood of complaints, lawsuits and worsening problems inside nursing homes. We feel the degree to which this crisis will intensify before the nursing homes will be adequately staffed and the system rationalized.

The fundamental task at hand in any reforms to the Nursing Home Act is to define what types of residents should be looked after in these homes and to provide the adequate resources to care for them.

We have argued that the residents must have their needs assessed upon entering a nursing home and then those needs must be reassessed routinely because of the care requirements that change as people age.

We suggest that the responsible action be taken at this time by this Committee would be to agree to withdraw this bill and reintroduce a bill that addresses the fundamental issues. Anything less amounts to political bandaid and would foster a dangerous escalation of the crisis that now exists in Ontario's nursing homes.

Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Nightingale.

Mr. Cooke?

Mr. Cooke: Thank you, Mr. Chairman. I would just like, first of all, to ask the Parliamentary Assistant with regard to the suggestion that Mr. Nightingale is making concerning a bill of rights that would form part of the contract.

As you are probably aware, one of the amendments that I am putting forward on behalf of my party is a bill of rights that would form part of a contract. I am not sure whether I am going to receive the support of your caucus or not, but one of the interesting alternatives that might receive support from one of the other political parties would be the suggestion that Mr. Nightingale has suggested. And I am wondering what the reaction of the Ministry is of a contract that would be signed by the resident, that nursing home and the Ministry of Health?

Ms. Hart: I am not going to give you an answer to that right away because I do not have enough details. Are we talking about, like, what is going to be in the contract? Something --

Mr. Cooke: Just as spelled out in my amendments.

Ms. Hart: We can discuss it, but I do not have a position on it right at the moment.

Mr. Cooke: Okay.

I understand your frustration and you must also understand our frustration in that we have a Bill that is presented to us that we can amend; we cannot amend things that are not in the Bill. So, that when the opposition parties are dealing with a limited number of issues - and, believe me, there are a lot of other issues that probably you would not want me to address that I would like to see addressed if the whole act was opened up - but we cannot deal with some of the concerns that you have.

However, I would like to specifically ask you, since you voice support for a bill of rights, you have looked at the amendments that I am presenting on behalf of my Caucus. Could I get your reaction to the bill of rights as presented in the amendments?

Mr. Nightingale: Mr. Chairman, I do not think -- in reviewing this situation, if we could have a section under the definition section which defines "assessed need", and if we could get a statement under Section 2, that the Ministry shall ensure that the residents' assessed needs are met.

And if we can get the Ministry to be a signator to the contract, then we could live with the bill of rights as you have enunciated.

Mr. Cooke: What you are basically saying then, is that nursing homes should remain in the private sector but that the large amount of the responsibility - both legal and otherwise - would rest with the Ministry of Health.

Mr. Nightingale: That is not our interpretation, Mr. Chairman. I think it goes beyond that.

Mr. Cooke: It might.

Mr. Nightingale: With all due respect, it goes beyond that. It goes in terms of the entire extended care program is the issue in our concerns. That there is something fundamentally wrong if there is a resident in a nursing home receiving one level of treatment and support versus a home for the aged or chronic care facility.

Having the Ministry define what the assessed needs are -- and I think there is agreement that people ought to have their assessed needs met -- then we see no problem having the Minister a signator to that and then building in a bill of rights to all residents under the extended care program, not just nursing homes but the entire extended care system.

Mr. Cooke: I do not disagree that there should be a bill of rights for extended care residents and residential patients, as well as homes for the aged, but we do not have a new Extended Care Act covering both facility in front of us; all we have is an amendment to the Nursing Home Act and that is all we can deal with.

Mr. Nightingale: But, Mr. Cooke - if I may, Mr. Chairman.

Once the government raises a Bill, as I understand it, the entire Bill is open. And that amendments can be made to each and every section whether or not the government introduced amendments to it or whoever introduced amendments. And we would hope once the clause-by-clause debate begins tomorrow, that as amendments are introduced that the parties, presently represented here, will give consideration to opening up the aspect of assessed need, having a definition of it - having the Ministry define according to what is assessed need. And then all other provisions make sense, Mr. Chairman, because what we are after is equilibrium. You cannot expect people to meet undefined expectations without the resources and definition of what their job is. Otherwise, as Mr. Cooke has said, I do not think we have many problems with any of his amendments.

Mr. Cooke: I can assure you that when the entire new Extended Care Act comes before us that our party will be presenting very similar amendments to what have been presented here today, if they are not already included in the Act, such as a bill of rights and contracts, and other kinds of guarantees that should apply to not only residents in your facility, but also residents in homes for the aged.

Mr. Chairman: I tried to do this before, but the members of the opposition caucuses are only able to move amendments within that which is before me at the moment, the Act as is before me. The government, if it chose to, could move amendments that would extend what we are dealing with, but I cannot allow members to move amendments which are outside of what is here. And then --

Mr. Cooke: Outside of these particular sections.

Mr. Chairman: Outside of these particular sections, that is right.

Mr. Cooke: Yes.

Mr. Chairman: And that becomes problematic from time to time.

Mr. Nightingale: Mr. Chairman, I understand. I was trying to make a passionate plea to the government to reconsider and take some time to reintroduce it in April. Having heard the submissions and the valuable input by all the concerned parties and their submissions, to take a little more time and to develop a more rationalized scheme of dealing with this Bill. That was my plea.

Mr. Chairman: Are there other questions from other members? I see none.

Thank you very much, Mr. Nightingale.

Mr. Nightingale: Thank you.

Mr. Chairman: Our second responders today to the various amendments are the Ontario Coalition for Nursing Home Reform.

Ms. Steffler, welcome.

Ms. Steffler: I will introduce ourselves again. I am Verna Steffler. I am chairman of the Ontario Coalition for Nursing Homes and Judith Wahl, who is legal counsel.

Mr. Chairman: I had a mental block.

Ms. Steffler: Pardon me?

Mr. Chairman: I had a mental block.

Ms. Steffler: We have had rather a, most of a night's session, I think, trying to go through these last night to be prepared for you today. But we are going to address the amendments that all parties presented to us and Judith is going to take over.

Ms. Wahl: We are not going to repeat our earlier submissions. You have our brief; we refer you back to the brief because obviously there are many amendments that we are requesting that were not taken up by any of the parties.

I want to do a brief review on some of the amendments that have been suggested. First of all, starting out with the bill of rights. The whole idea of a bill of rights is that it has to be clear, concise and legally enforceable, and there has to be enforcement mechanisms to make it work. Unless you have all those factors, it is not going to work.

As I said at the earlier appearance, residents have many of these rights already; they are already in contract or they are implied in the contractual relationship between the resident of the home, and it is a sad comment that we do have to put it down on a form. But the Coalition supports it being put in a section as rights sections in the Act because people do not realize that the residents have these rights. So, we have to make clear statements to that affect.

We criticize the original proposals on the basis of the format, it is an interpretive section. We would, again, state that these rights should be put into sections of the Act so that they are enforceable.

We submit that the NDP motion does not go far enough because it still states that every licensee shall ensure that the following rights of residents are fully respected and promoted. It is only putting the obligation on the licensee to respect and promote the rights; not to make sure that the residents have these rights.

In any event, the residents either have the rights or they do not have the rights; you either put them into sections or it just comes down to yet another interpretive format.

So, we would submit that they should be put down in sections and again I refer you back to the children's legislation The Child and Services -- now, I cannot remember the name of what they are.

Mr. Chairman: Child and Family Services Act?

Ms. Wahl: Child and Family Services Act, which sets out children's rights as statements. Child has a right to blank, child has a right to blank, which makes it clear, makes it clear to all parties. Makes it clear to the staff and the residents and their families, and the operators.

In terms of enforcement, even in the amendments proposed there still is not the enforcement mechanism. It is being put into contract which supports that, that was part of the our submission as well. It should be put into the admissions contract so that residents are clear about it, but that is only giving the residents the power to enforce it through a contract. And so they would still have to go to court.

What we are talking about are residents who are elderly, who are not going to last the whole term of a court action, and in the way that the right sections are drafted, in either format, some of these rights I do not think would ever make it through a court. So again, it is tightening up the format of these rights to make them clear, to make them enforceable, and then putting in that other mechanism, be it that-- you know, we are not drafts people. We are making suggestions as to different mechanisms, but it has to be more than the contract. Be it the form of an arbitrator, be it the form of a review board or a tribunal. But a mechanism that is going to allow the residents or their staff - who are protesting that they are being accused of not enforcing a right or not supplying a right - to be able to get in front of the tribunal to get the matter dealt with quickly and get a hearing, get it done, get it enforced.

In terms of the proposed amendment Section 2(18.3) of 7 of the Act, we support that there should be a written contract on admission. This would clarify the relationship between the residents and the home. But I must make comment again, it is including the idea that the licensee has the obligation to respect and promote the rights. It is still not putting the licensee, in the actual relationship that is already there now, which is to make sure the residents have their rights. I think this might diminish what the residents have at their access at this point in time.

In terms of the review of the contract, I can see what the intention was. I would assume the intention is to keep the contract up to date, keep the residents aware, but two points. If there are amendments to legislation, the idea of a review, the review may be cumbersome because it is time consuming, every resident would have to go through the process. If there are amendments to legislation, a section could be put into the Act that the amendments that affect the rights would be deemed to be part of new contracts. So it is automatic into all the existing contracts and the residents would have to receive notice of the amendments to the Act. So that gets it in automatically.

And, secondly, a contract is a relationship between two parties. The contract cannot be changed unilaterally by one party, that breaks the contract. If a change occurs to the contract, the operator should be meeting with the resident at that point in time. So, if new services are being negotiated the contract would have to be reviewed at that point in time, not that once a year but when the contract is changing. So it may be that this section is redundant because the review should take place when the contract is being changed.

The Coalition supports both the two variations of motion -- the government motion and the NDP motion -- on Subsection 3(5) in adding the cost of the living area and any other area. I think that our brief sets out our position on that quite tell.

The Coalition also supports the NDP motion in terms of Section 4(4)(g) of the Act, requiring a review of the appointment of the administrator. As we have said before, it is key personnel, that position should be reviewed and should be under the purview of government.

We note that both the government and the NDP have attempted to put in a review process on the licensing. As we stated in our previous brief, we support a public review process. We submit that the government motion does not go far enough because it provides a mechanism for the submission, but not the hearing.

It is the second part that needs to be there. It is fine to get the submissions but is the public really going to be hurt in that format? The NDP proposals do provide that hearing process. We would question whether it needs to be as extensive to go to the exercise of a security interest and the approval of the administrator, that just might be a cumbersome mechanism to deal with. Those are not the same as licensing or relicensing processes.

We also support the NDP motion on Section 5, Clause 5(d), extending the examination of conduct to the conduct of the management corporation; that was also in our brief.

We note that there has been a proposed amendment concerning the offer to comply. In the review of the proposals the Coalition would support the government motion. We feel that this is a strong position, we welcome that kind of a statement being made in the Act to get around having to extend yet again and again and again opportunities to comply. It is putting a licensee on -- having the onus to show that they have had the opportunity to comply and have not complied. Putting the onus on them is a very positive amendment to the Act.

We also support the motions to change the parties before the Board to extend it to the residents or group of residents who request the party status. Residents may have individual interests other than the interest of the Residents' Council and should be parties before the Board.

We also support the NDP motion to change Subsection 10(2), being Subsection 13(3) of the Act, adding the words "for residents" to make it clear that the additional services are to be before the residents in the facility and not to be included in the community services. For the same reason we object to the Conservative motion which implies that services will be provided from the homes to the community.

One statement I omitted, in an earlier section, it was the section concerning the written contract. There was a statement in that proposed amendment saying that the contract would be reviewed by the residents or the residents' representative. It must be made clear in the legislation that the residents' representative does not take a role unless the resident has appointed that representative to act for them or the resident is mentally incompetent and incapable to act for themselves.

So, it would be the legal representative of that person or appointed. A very important point because in many cases the families are as abusive to the residents as anybody else would be. They take advantage of the resident, assuming the resident is not competent or capable. Because a person is frail or elderly does immediately imply that they are incompetent. So, unless the resident is appointing that representative, that representative should not have a primary role, they should have a secondary role.

The Coalition also supports the NDP motion providing for the provision of monthly statements to the residents. Again, the same comment about the representative of the residents. It should go to the residents first unless they otherwise direct.

The Coalition also supports the NDP motion concerning Section 15, Subsection 17(a)(2) of the Act, removing the words "maliciously and without reasonable grounds". As we have stated before, if those words are left in the section, it sets up a barrier for people to report the abuse. If somebody is acting maliciously or without reasonable grounds, those matters can be dealt with in other forms, be it through the Labour Board, be it through dismissal proceedings that would be well-documented. It should be removed out of the Section.

The Coalition also supports the government motion under Section 15, Section 17(b) of the Act, which provides added protections where the licensee has to provide to the

director the records of the complaints, setting out the statement of the licensee and the duty on the director to investigate those complaints. We see that as a positive addition to the amendments.

In terms of the financial statements, there have been motions both by the government and the NDP. It is difficult to comment in great detail on either proposal. We are not accountants -- we do not come from that background -- but we would submit that there should be a standard format as set out in the regulations. It is going to provide the standard information that the Ministry needs to better monitor the homes.

If it is left as statements prepared in accordance with generally accepted accounting principles, there are many statements that could be produced out of that and that could result in a lot of confusion and a lot of creative accounting. The statements are there for a purpose. They are there to provide certain information and that justifies the format being set out in the Act.

I have some fear that putting so much detail in terms of the format in the Act may limit the things that should be reported. As its criticism of the NDP motion, it may limit it rather than putting in everything that you need to have reported.

The Coalition also supports the NDP motion on Section 15, Section 17(d) of the Act, the obligation of the administrators to convene with residents to advise them of their right to have a Residents' Council.

As the amendment Act states, that the Residents' Council will not be convened unless there are at least three residents who want that. There has to be notice to the resident that they can have a Residents' Council and that has to be done on a periodic basis; otherwise, the residents will not be aware that they can form that council.

The Coalition also supports the Conservative motion on Section 15. We appreciate the fact that the Residents' Council would be the primary party, that the Residents' Advisory Committee has been struck. And that the investigative powers have been removed and any investigative duties have been removed from Residents' Council.

The one criticism we have of that motion is that it still puts in the power of the Minister to appoint the advisor rather than putting that into the power of the Residents' Council. We again submit that the Residents' Council should have the right to appoint whatever advisors that they want and there should be a funding mechanism put in the Act to give the Residents' Council access to funds to retain their necessary Council.

We would also suggest to the Committee to again review the penalty provisions. As stated in our brief, we believe that the penalty sections do not go far enough. We believe that the motion does not go far enough. It does increase the fines, but to be effective, to have effective enforcement, there needs to be intermediate sanctions which need to be built into the Act. A structured penalty system should be built into the Act.

The fines themselves, it is too long of a process to get the fine, in the end to have a fine awarded against a home for a breach of the Act. There needs to be a faster process. Again, it is the enforcement mechanisms that we feel are missing from the Act.

Those are the general statements that we have. We are open to any questions.

Mr. Chairman: Thank you, Ms. Wahl, for a simple but very thorough review of the various amendments that have been put forward.

Questions by the members? Mr. Cooke?

Mr. Cooke: I would just like to start off with the penalty section. You read our proposed penalty structure that actually has a structure in it and it tries to distinguish between the different types of violations. You would not comment specifically on this amendment, so I wanted to get your reaction as to whether that went in any direction to satisfy you.

Ms. Wahl: It goes part-way. In a sense it still does not get to the essence of the problem. The penalties are there, but monetary penalties are not enough. If there is going to be an effective enforcement of the Act there have to be those other alternative penalties and the mechanism put into the Act to permit that.

If this stands in addition to other sections that would put in other penalties, fine. This is getting along the idea that we were proposing, but we submit it just does not go far enough.

Mr. Cooke: I have not been quite frankly convinced that the other sanctions would be any quicker than the sanctions that already exist in the legislation, because there is going to be due process attached to any sanction that is imposed on a nursing home.

So, that when you take a look at the amendments - some of which are being proposed by the government and some of which are being proposed by us - that number one, they all call for 24 hours' investigation of infraction that puts at

risk the safety, welfare or health of a resident. With the streamlining of the taking over of a nursing home or revoking a licence if, in fact, the safety or welfare, or health of a resident is at risk, along with higher penalties. I think that we see some substantial move towards a better compliance or better enforcement mechanism.

Ms. Wahl: They are better; they are not the best.

Mr. Cooke: I am not sure what the best is, to tell you the truth. The best would be to make them all non-profit, but we are not getting that way.

I would like to go back to the bill of rights because I quite frankly do not understand what you are saying.

Ms. Wahl: All right. In terms of the way it is worded, "Every licensee shall ensure that the following rights of the residents are fully respected and promoted". I really question, as a lawyer, whether that is putting the obligation on a licensee to make sure that these people have the rights.

And, secondly, either residents have rights or they do not have rights. It is not a question of whether the licensee is going to make sure the rights are respected. The resident has a right and it should be set out in the Act. We submit that it would say, "The resident has a right to..."

Mr. Cooke: I was going by quite frankly what legal counsel advised. And my understanding is that when you use the words "Every licensee shall ensure..." and then it goes on "the rights of residents are fully respected and promoted". Then you list them in the way that you are suggesting, "Every resident has the right", and then you read that in combination with the next two sections, that set them out as points of principle as well for interpretation of the entire Act, "and the duty of the licensee to properly staff the home in order to see that the rights are respected and promoted".

I am told that by combination of all of those things you have got two enforcement mechanisms: One, the Act, and the fine, the penalty section applies to this. And number two, the individual contract. So you have got a civil remedy as well as a remedy under the Act.

Ms. Wahl: I would disagree with your council, because I think that I would be able to argue around that section. Where a licensee may be saying that they are promoting all these rights and they have posted the rights around the home, they are telling all their staff that the rights should be enforced, dah-dah, dah-dah, dah-dah, and then one of the staff does not follow through on the rights. I do

not see that being caught.

Mr. Cooke: How would you word the introductory paragraph there?

Ms. Wahl: I would not have the introductory paragraph. I believe that it could be put in a format where it says section --

Mr. Cooke: You have to say who is responsible. So, you have to have something that says "Every licensee shall do something" or else you have got nothing that says specifically in the Act who is responsible.

Ms. Wahl: But cannot it -- now, I am not a drafter --

Mr. Cooke: I am not even a lawyer.

Ms. Wahl: I am looking, when I read these things, I am looking for ways how to argue around it.

Mr. Cooke: Yes.

Ms. Wahl: Because as an advocate for the residents I want to make sure that I can argue strongly, particularly in a court forum.

I believe that if it was set out that, "the residents have the right to" and then a separate section that says, "the licensee has the obligation to"; does that not fulfil that purpose and answer that question?

Mr. Cooke: I do not know.

Ms. Wahl: This seems to limit it. In some ways it is almost like a limiting clause.

Mr. Cordiano: Is not that more firmly established by regulations?

Mr. Cooke: No.

Mr. Cordiano: Why not?

Mr. Cooke: Because there is no --

Mr. Cordiano: I am not asking you, anyway, I was directing it to the Ministry or the Board in general?

Mr. Cooke: It is not the place of this Committee to answer my colleagues... I am sure they do --

Mr. Cordiano: Since they did not draft the amendments they may not know, but I am asking the Ministry what their position is on it. Are you ready to proceed --

Mr. Cooke: Sure, I do not care.

Mr. Chairman: Question to legal counsel, I would suggest, Mr. Johnson. The question, I guess, is whether or not these matters are better handled by regulation more clearly.

Mr. Cordiano: Well, yes. More defined than regulations. What are the obligations? What the licensee is responsible for in terms of obligations? What stipulations he is required to fulfil?

Mr. Johnson: As is currently the case, there are detailed regulations now in existence behind the current Nursing Homes Act and I understand it is the intention of the Minister to completely overhaul those regulations, to update them to fit this new amendment.

As one can see now, there is a great detail, like, staffing hours, what kind of nurses that must be on duty, et cetera, et cetera. The kind of detail that normally you would not find in an Act, rather, in a regulation.

Mr. Cordiano: Okay.

Mr. Cooke: However, what we are dealing with is a bill of rights. And normally a bill of rights for patients is in the legislation, not in the regulations, if you are going to have one.

Mr. Cordiano: We are addressing the question of detail. The question really is specificity of the bill of rights.

Mr. Cooke: Well, that is what I am saying.

Mr. Chairman: I think this is turning into a debate.

Ms. Wahl: Even in terms of some of the rights, even as they are drafted here, it seems that some of -- they are not necessarily rights. Again, the bottom part of it is like the top of an iceberg. Where you say that a resident has a right to receive care by staff with up-to-date knowledge about disabilities and the process of ageing. First of all, that is not a right; it is open to a lot of interpretation.

Would it not be preferable to have in the Act sections that deal with the minimum skill level and the education level of staff; the number of staff necessary for the homes, dealing with that formula; and sections on the training, the in-service training which we see were not included in the amendments at all.

When we are dealing with rights we are dealing with issues that can be enforced or not enforced. If they are left so broad, they are not going to be enforceable, in any event.

Mr. Cooke: I do not disagree that it would be nice to have the staffing regulations opened up for debate in the Committee. Unfortunately, they are not, because that section of the Act is in the regulations and we do not have that section of the Act open.

It seems to me that if you are dealing with two separate issues. One, the bill of rights sets out the principle and sets out some guaranteed rights. Then if you do it properly you would carry out each and every one of those throughout the entire Act as you are suggesting. But we are not dealing with an entirely new Extended Care Act right now.

So the only thing we can really deal with is rights and the bill of rights at the beginning of the Act. And eventually, I would hope, that if this is carried tomorrow that the new Extended Care Act would then carry these principles out in the details in every section of the Act and in the regulations.

Ms. Steffler: But how do you enforce a lot of these bills of rights? And if they are going to be a bill of rights, you need to be able to enforce them.

Mr. Cooke: Some of it is enforceable. There is no doubt at all that every legal counsel that I have talked to says that a bill of rights is difficult, at best, to enforce. I think we have got it done as well as it can be done.

Ms. Steffler: Well, you can even say, like, in No. 10, "The maximum level possible". Well, what is the maximum level possible? You have to be able -- even in No. 16, "terminally ill?" "Terminally ill" means anything after the time I have been diagnosed that I have cancer. I am terminally ill; I could die next week or I could die five years from now, but I can have somebody in my room for 24 hours a day for the next six years? Like, "terminally ill" is not even a proper definition. You might use "critically ill" because "critically ill" you are then determined as being close to dying.

Mr. Cooke: If they are critically ill they might not be in a nursing home. It is great defending one's legislation, but I if had a chance to start from scratch...

Mr. Chairman: This is a fairly significant area of drafting problem. You have referred to the Children's Act. The Children's Act does not have the kind of specificity you

are talking about in terms of hours of care and that kind of thing. And a definition --

Ms. Wahl: Okay, no --

Mr. Chairman: The difficulty is in distinguishing between that which could be within a bill of rights which is always more vague than you would like it to be - look at our own Charter, nationally - and that which is then going to be more specific. Whether it is in regulation or in a specific section of the Act dealing with staffing regulations and that kind of thing.

Again, we come into the problem of where would that amendment come given what we have got before us. That is the difficulty we have.

Ms. Wahl: I want to make it clear so it not misunderstood. We have put forth the example of the children's legislation only as an example of the fact that it is set up as the child has a right to, and it is a right that is clear. It is not that we think that what the rights that are enshrined there are the great rights that should be put into this Act. By no means. That is not intention that we want to convey.

But it is the concept of the enforceability, the clarity, the need to make it very specific so that it can be enforced. That is the problem. If they are left too wide open, it is not going to benefit the resident any more than it is going to benefit -- it is not going to benefit the resident because it is going to be twisted and manipulated, and that is really the bottom point we want to make.

Mr. Chairman: I remember drafting that other Act and working on it. And, for instance, really you did not have a right to treatment for children in that Act in terms of it being specific. And there are real problems of definitions of rights.

The Parliamentary Assistant has a...

Ms. Hart: One or two short questions dealing with Section 8(1) of the Act as set out in Subsection 7(1) of the Bill. It was the NDP motion. The NDP amendments make the following parties and includes all residents and all employees.

My question is a lawyer's question. When you make somebody a party as of right and not on request - as we have done in our motion - you then are required to serve every employee, as I read it, and every resident whether or not they want to be involved with all the proceedings.

Do you see a problem with that? Does it satisfy your

needs if those people can be parties on request?

Ms. Steffler: I did not catch the last of your sentence? What was the last part of your sentence?

Ms. Hart: Does it satisfy your needs or, I mean, proposals if those people can be parties upon request, but they are not parties right from the beginning so that they have to be served with all of the paper. As you can imagine, there would be a lot of paper --

Mr. Cooke: But you have amendments.

Ms. Hart: Yes, that is what I am saying. Are they --

Mr. Cooke: --change of residents.

Ms. Hart: Ours is similar, but it differs in that way. That all residents can be parties if they choose to be to the proceeding, but the NDP amendment makes them parties initially whether or not they choose to be and throughout the proceedings. Am I making myself clear? I am just looking for a reaction to that.

Ms. Wahl: I am a little bit stuck. I am not sure how to respond. The difficulty is getting the notice out to the residents and the staff, so that they are aware that these proceedings are going on. And if you are not serving everyone with the documentation, then you have to have sufficient notice provisions that it will come to their attention.

Ms. Wahl: Yes.

Ms. Hart: I can see the practical side of it, by not having to serve everyone, it is time saving, cost saving.

Ms. Wahl: Unless it is throughout the proceeding.

Ms. Hart: That is right.

Mr. Cooke: They do not have to exercise that right.

Ms. Hart: Perhaps I could respond to that. Whether or not they exercise that right, under the wording of your amendment they must be served.

Mr. Cooke: Well, yes, to let them know that they have the right.

Ms. Hart: No, throughout the proceedings, whether or not they exercise it.

Ms. Wahl: I would agree with you, that they would have to continue to be served unless there was that

secondary part to it, saying that if they did not respond in "X" number of days they would not have to have the continued service. Then that would make sense because then it would still get the notice which would make them aware of the proceedings, but not have to have that continual onus on counsel in serving all parties.

Mr. Chairman: The second one?

Ms. Hart: Yes. The second one has to do with the financial reporting. It was the NDP motion amending Subsection 11(2) of the Bill, talking about the monthly financial statements. And my question, although, it is directed to that subject matter does deal with the wording specifically of that motion.

What is it that you feel would be advantageous to give to the residents on a monthly basis? Is it necessary to break down, in your view, every cost, laundry cost, every staff cost, and put a dollar figure next to it on a monthly basis? Is that what you are looking for? Or are you looking for a more -- Well, perhaps you could tell us?

Ms. Wahl: Charging against their account; it is what is being charged against their account.

Now, I am sort of moving into my other hat -- as being one of the members of the Advocacy Centre for the Elderly. There has been a problem that we have identified on a number of occasions. Residents are not aware of the particular charges made against their account when accounts are requested. We have seen some rather strange accounting procedures and it really relates to an accountant that is not doing a very adequate job in preparing statements.

But it is giving residents notice of what they are being charged for and what is the cost of those. So, it would be, if they have the additional hairdresser charges, if they have additional services that they are being charged for, make them more aware of that.

This gives them the opportunity, then, to say, "Look, I did not agree to that charge. You know, this is an error." Or "This is up too high this charge, I agreed to "X" amount of dollars rather than "Y" amount of dollars." It is just like any Bill that you or I would receive in any other scenario. If you are being charged for it, you want to know what you are being charged for.

Ms. Hart: Thank you.

Mr. Chairman: Questions?

Mr. Cordiano?

Mr. Cordiano: I think you agreed with the amendment, the motion put by the NDP with respect to looking at Section 4, 4(g), where the selection of an administrator must be approved by the director?

Ms. Wahl: That is correct.

Mr. Cordiano: You do not see any problem with that?

Ms. Wahl: This was the submission that we made in our brief. There is a more detailed explanation about that.

Mr. Cordiano: Yes, I recall that, but I just want to look at the possible difficulty with that.

Do you not feel that the Ministry would be put in a conflict-of-interest position, having to approved of some administrator and then having to take this same home - enforcing part of the Act - and taking this home before the Board or before the courts?

Ms. Wahl: With the approval of the administrator for the position, in a sense it would be put in the regulations what the criteria are for approval. If the administrator meets certain criteria, then they would be approved. I do not see it as any different from the licensing process, where the director is proving a home for a licence and then they end up prosecuting that same home for infractions of the Act. They have approved them at some point in time; it is the same idea.

Mr. Cordiano: But if you were approving this administrator, presumably you are going to be approving what? The qualifications of this person?

Ms. Wahl: Qualifications, educational background, whatever would be set out in the regulations, and again, we have put a detailed list --

Mr. Cordiano: So that would shift the onus on the Ministry to approve someone as manager, as opposed to leaving that responsibility with the licensee, who is charged with obviously good operation of that home?

Ms. Wahl: The licensee would have still have the obligation to hire somebody. They would still have the obligation as any employer in hiring their administrator. The administrator does not get a one-up. The Ministry would not be able to direct the licensee to accept an administrator.

Mr. Cordiano: But if there was a problem with the -- presumably, there might be a problem with management. Now, then you have effectively said that the Ministry has approved of this person and as a result we could make an

argument that there is not a problem with management, and then the onus shifts from the licensee to the Minister because you can bring that up.

Ms. Wahl: In what context?

Mr. Cordiano: I mean, if you were getting approval by the Ministry for some administrator --

Ms. Wahl: Right.

Mr. Cordiano: All right? If you are going to make a case that management in that particular nursing home is not up to par - and it is very difficult to prove that - the licensee can simply say, "Well, the administrator was approved by the Ministry and I will just simply change administrators", and shift the onus from the licensee to the administrator. Suddenly, you have shed the light on the other person.

Ms. Wahl: I do not believe it is any different than the approval of a licence. At some point the Ministry approving a particular operator; they are approving the particular licenceholder.

Mr. Cordiano: But do you not see the practical, the --

Mr. Chairman: We are getting into a debate here which is not the purpose. The purpose is to elicit information.

Mr. Cordiano: I will put it in the form of a question.

Fine. But is not there a difficulty with the Ministry approving of someone? You can approve based on a certain set of the qualifications, but beyond that, what is the Ministry supposed to do about it?

Ms. Wahl: That is the approval process. It is to ensure that the administrator has a certain standard, they have certain qualifications, and they meet those qualifications. And that is the approval process.

It does not get into the employment process. The employer, the licensee, still has to employ a particular administrator based on the skills that they feel are necessary, but that person also must have an approval. They also must have the approval of the Ministry. It really is no different than the approval of the home by the director in licensing it in first place.

Mr. Chairman: I have now heard that several times. Is there another question you would like to raise? Any other members have questions for this group? If there is

not, then thank you again for taking the time to respond so quickly.

Ms. Steffler?

Ms. Steffler: I have just one other concern in regards to all of this. And I guess maybe I am putting on another hat as well.

Mr. Chairman: Which one is this? Because we have only invited back certain groups.

Ms. Steffler: It is one that would be an employee. You take a look at the amount of rights that the resident is going to have and it is part of this whole piecemeal where this is one piece being done and regulations are another piece being done, and everything becomes just another piece, difficult to look at it all together.

But if you have not got the staffing to go along with all the Bills of Rights that the resident has a right for, there is no way that a resident is going to have all of this happen for them because you have not got sufficient people to be handle all of these rights that I am entitled.

So I think, you know, you cannot look at it in pieces. The number of things in here as a right, as an individual working in a home, believe me, it means four times as much paper work as is already having to be done today. And you are going to find more staff spending more time so-to-say covering their backside because they will want to make sure they put everything down on the chart to be able to save themselves. And you are not going to have as much time to spend on the individual care of the residents.

Mr. Cooke: I just want to respond because I do not disagree with you, but I do not know what you are suggesting. Are we going to leave the bill of rights out? I mean, we do not have the ability to deal the staffing issue. If we did have the ability under this Act to deal with the staffing issue, we would. We came as close as we could by simply saying, "A licensee shall hire enough well-qualified persons to staff the nursing home to ensure that the rights set out in Subsection 2 are respected and promoted." That is as close as we could come.

What you are basically saying is throw the bill of rights out.

Ms. Steffler: No.

Mr. Cooke: You are either for it or you are against it.

Ms. Steffler: No, I am just saying that when you put

it into effect, you need to have everything else ready in effect as well. You cannot --

Mr. Cooke: Well, we do not--

Ms. Steffler: Or you cannot meet a bill of rights.

Mr. Cooke: --because we do not have the whole Act open. It is simply not in the bill of rights.

Mr. Chairman: Again, we are entering a debate. Should not we be concerned with the problems that we are dealing with?

Mr. Cooke: I will have a drink with you after the meeting.

Mr. Chairman: Mr. Jackson?

Mr. Jackson: Mr. Chairman, my question would be similar to Mr. Cooke's, but I want to address the same point.

Verna, do you agree with some of the statements made by the previous disputants, where, for instance, Mr. Nightingale basically commented on the same point. That to deal with those elements of the Bill with the residents' rights and bill of rights in isolation from the other issues of funding and staffing, is not going to net the necessary effect which we are all hoping for. So in that sense could you enjoin those elements of his brief which addressed that specific point?

Ms. Steffler: The points in regards to, yes, staffing. It is really going back to go what I just said. You cannot give everybody all of these rights if you have not got the staff to provide all of those rights. And that some of them - providing rehabilitative care and all of this - if you have not got the staff to do it, then they are going to be breaking the bill of rights because there is no staff there to do it.

Mr. Jackson: Might I carry on on that point. Would you then agree that a more responsible way of proceeding with this legislation would have been to have the government develop a statement addressing the issue of funding for staffing ratios and various levels of care and staffing levels. That that would have been a more responsible way to present this Bill in order for us to look at all--

Ms. Steffler: Well, it comes down to, you cannot talk about throwing more funds into it, until you can get the accountability of what is already going on out there. And that is been covered, yes, in the revisions. But once you have got accountability and you know whether there are

profits or loss, or whatever there is, then you have a better idea in regards to funding. It is sort of the chicken and egg; you do not know which one is better first.

Mr. Jackson: All right. If you had to decide on which side of that, then you are basically saying, "It is fine to proceed with this as long as we see from this government something very soon with respect to addressing the issue of funding and staffing."

Ms. Steffler: In regards to staffing, in particular, if you address staffing, then you can worry about funding after you have got the accountability.

Mr. Jackson: And how soon is soon after this Bill, in your opinion?

Ms. Steffler: It should have been done quite a while ago.

Mr. Jackson: That is a fair statement, but on the basis of the question I have asked relative to this Bill; how soon afterwards should that be developed?

Ms. Steffler: Well, I guess you would have to wait for one year to be able to get the profit and loss from an institution, to begin with. You cannot establish whether people are making a huge profit that is not reasonable or are they actually in a deficit. So, you almost have to wait until you have got one year's accountability.

Mr. Chairman: Now, with reference to the amendments that are before you, if I might. We are running a little late.

Mr. Callahan, you have a supplementary?

Mr. Callahan: I think I put that. It is exactly in some respects what the Select Committee on Health is trying to determine. And maybe we will get some figures and that may assist us in terms of finding out whether the issue is the question of inadequate funding or whether it is something else.

Mr. Chairman: No other questions from the members?

Then I would thank you very much and your various hats for your attendance here today.

Thank you. Under one hat, the Concerned Friends.

Ms. Steffler: May we have another one of these overnight sessions where we have to review something again overnight?

Mr. Chairman: Only if you have made special arrangements with Mr. Cooke. And I will leave that to the two of you.

Ms. Steffler: Thank you.

Mr. Chairman: We have a new member. Mr. Beattie is joining us today who we have not seen before, Ms. Fussell, and Dr. Jorgensen, again.

Welcome. Thank you for coming to give us your opinions on the various amendments that are before us.

Ms. Fussell: Should we introduce ourselves first?

Mr. Chairman: Yes.

Ms. Fussell: I am Joan Fussell, President of Concerned Friends of Ontario Citizens in Care Facilities.

Dr. Jorgensen: And I am Dr. Jorgensen, a member of Concerned Friends.

Mr. Beattie: Harry Beattie, officer and member.

Ms. Fussell: I wish to begin today by thanking the Chairman and Members of the Committee for inviting Concerned Friends to return to respond to the amendments put forward by Committee Members to the Nursing Homes Amended Act. We see this is as a final opportunity to emphasize with you several matters of importance to residents of Ontario Nursing Homes. All of these matters have been mentioned in our submission last week. Some of them were raised in our presentation, but we believe their importance merits re-emphasis.

What we intend to do with our thirty minutes is to raise, again, the importance of an enforceable bill of rights and point out our suggestions for necessary inclusions in the bill of rights. We will also elaborate our objections to the inclusion of residents and their families in the mandatory reporting requirements proposed. The importance of the Ministry exercising control over administrators in nursing homes and requiring financial accounts from management companies - well addressed in our brief - are so important as to merit fuller discussion and consideration.

Similarly, the need for the provision of itemized financial statements to go to residents; the prohibition of holding of powers of attorney of residents by nursing home staff and owners; and the importance of avoiding conflict of interest on the part of Ministry and industry staff merit fuller discussion.

Finally, we will urge the Committee to address the issue of appropriate penalties for enforcement of the amended Nursing Homes Act as amendments are examined. And we wish to restate and clarify our position on the proposed Resident Council Advisory Committee and advisors, and on Residents' Councils. We will draw attention to the importance of public input into the licensing and relicensing decisions of the Ministry.

To begin with, the bill of rights. The announcement of an enforceable bill of rights for residents of Ontario Nursing Homes as a statement of essential standards should be a priority in this legislation. In the United States, there are both a federal patients bill of rights with national effect and Bills of Rights enacted by individual states.

These bills of rights were enacted as the product of experience in the United States with the relationship between residents in nursing homes and nursing home owners and administrators. We in Ontario can draw upon the wisdom of this experience.

Such bills of rights clarify the obligations and responsibilities between residents in nursing homes and when included in service contracts between residents in nursing homes they also form the fundamental basis for contractual obligations between the parties.

At the conclusion of the discussion paper of the Progressive Conservative Caucus of Ontario on patients' rights in December, 1986, it is recommended, and I quote:

"First, there should be a legislated patients' bill of rights to cover all health care consumers. Subsections of the Bill should deal with the special circumstances of the elderly in long-term care facilities."

Having favourably examined an earlier proposed bill of rights prepared by Concerned Friends, the same Progressive Conservative discussion paper concludes, and I quote again:

"Our colleagues in the New Democratic Party have also urged that a comprehensive bill of rights for patients be introduced into the legislature. Given this legislative consensus, all that remains is for the government to act."

And indeed it is this which Concerned Friends is also urging the Committee to do, to recommend the introduction of an enforceable bill of rights in the amended Nursing Homes Act.

We regret that during our last presentation and during our brief presentation today, we have not had the time to draw your attention to the important provisions of our proposed bill of rights for residents included in our submission on pages 10 through 13. You will see that it differs in several important respects as to content with that proposed in the original amendment.

Our recommended bill of rights is derived directly from our membership's experience as volunteers in long-term care facilities and as advocates for Ontario nursing home residents. It would provide the basis for the reasonable quality and standard of life for nursing home residents which the citizens of Ontario have a right to expect. We urge, again, its detailed consideration and adoption.

On mandatory reporting. We wish to emphasize again at this time the importance of our position for residents that both residents and their families must be exempt from the mandatory reporting of harm requirements, while residents must be extended the protection from reprisals.

Relatives fear reprisals against their vulnerable family member and should not be compelled by law to act in a manner which may jeopardize their family member in a nursing home. As drafted, we are very concerned both about the enforceability of this requirement for residents and relatives, and about its impact on their reporting.

How in conscience can a victimized resident be penalized for failure to report their own victimization? How in conscience can concerned families be penalized for not reporting what they are uncertain that the Ministry can even prevent? Discretion in prosecution is no guarantee against enforcement of the legislation in such a way that it might in future deter reporting by residents and relatives.

Last week it was suggested that the position of residents and relatives was similar to that of staff. We perceive very real differences between the expectations that the government may impose upon paid staff of nursing homes and on the residents and families of residents.

Staff have some recourse to other means of protection, such as grievance procedures and labour legislation which are unavailable to relatives, and clearly unavailable to residents.

On residents' personal finances and power of attorney. There are two related points of concern to residents in nursing homes which require additional emphasis before this Committee. The first of these, as we stated in our submissions, is the need for a legislative requirement to provide monthly statements of personal financial accounts to residents of Ontario Nursing Homes, itemizing the services

charged to residents and the date of delivery of these services.

Such statements should be easy to prepare and would considerably relieve the anxiety of residents about their financial affairs in relation to the nursing home. It would also provide a further necessary and reasonable means for auditing the expenditures made by residents beyond their per diem.

The second point arising from our concerns on these issues is the inclusion of a prohibition against an employee or owner of the nursing home holding a power of attorney of a resident. Such a prohibition would preserve the integrity of a dependent situation. It has also been our experience that powers of attorney have been mistakenly thought to convey with them the right to confer consent to medical treatment, thus wrongfully depriving residents of their rights in this regard. While this is quite incorrect, such errors are nevertheless repeatedly made and the proposed prohibition would avoid their occurrence.

On the subject of financial accountability. We fully support amendments proposed by the government and the NDP to strengthen financial accountability of nursing homes. We recommend that management companies also be required to submit financial statements detailing all expenditures related to management of the nursing home. We also recommend that financial statements submitted by nursing homes should include as a separate line item administrative costs associated with head offices of the corporation to distinguish them from amounts spent on direct operating costs related to the individual facilities. We continue to request consolidated financial statements where owners hold a number of licences.

And on the subject of administrators. Again, we must remind the Committee of the importance of the effect of management companies and administrators on the operation of a nursing home and on the day-to-day lives of residents.

In our submission, we suggested that decisions by the director in regard to licensing and relicensing of nursing homes take into account the record of management companies and administrators, keeping in mind their enormous impact on the quality of resident care. Amendments proposed by the NDP in this regard reflect these concerns and warrant your support.

With respect to conflict of interest, we continue to be concerned about the lack of prohibition for Ministry employees charged with enforcement of the Act and regulations from obtaining employment in the nursing home industry. We are also concerned that there is no prohibition on hiring industry employees within the branch.

We again recommend that you consider amending Section 16 to prevent the Minister, the director, and employees of the branch from embarking on careers in the nursing home industry for a minimum of two years after leaving the inspection service.

We further recommend that the Ministry's inspection services be prohibited from hiring licensees, owners or employees of nursing homes for a period of two years after leaving the industry. Such prohibitions would protect the necessary integrity of the nursing homes branch.

And on penalties. Amendments made with respect to penalties for violations of the Act and Regulations are inadequate. We strongly urge you to consider adoption of the system of scaled penalties with more serious and repeated violations subject to much stiffer penalties.

We suggest that it is the responsibility of the Ministry of Health to develop such a system as scaled violations. We are aware that such systems are in place in other jurisdictions; for example, in Michigan, Connecticut and Minnesota. As it stands, the violations of the Act and Regulations must be dealt with through compliance plans, fines or the most drastic measure of the revocation of the licence through invocation of the Health Facilities Special Orders Act.

A range of other penalties as articulated in our submission will increase the capacity of the Nursing Homes branch to deal effectively and expeditiously with infractions in a meaningful way.

Now, Mr. Chairman, my colleague, Harry Beattie, would like to address the issue of Residents' Council Committees and advisors, and the subject of public input into the licensing and relicensing process.

Mr. Chairman: Thank you.

Mr. Beattie: Perhaps I will take those in reverse order, Joan.

The public input into the licensing and relicensing progress issue was discussed at some length when Concerned Friends made its presentation to this Committee last week.

Since that time, of course, the motions to be made by the various parties have been received and both the government and the NDP have addressed the public input issue.

The government motion would now say that there would not be a decision on relicensing without public notice - on

licensing or relicensing, new licences or relicensing - and that there would be an opportunity for written submissions. The first point in which we would recommend that you go further is to consider that the director, or his designate, actually, attend in the community to give people a chance to make oral submissions as well, as happens in some other kinds of licensing procedures.

One argument for this is that requirement of government that a written submission be made may tend to screen out the participation of people for any number of reasons, of people who may lack language skills, people whose relatives or who they themselves are in a nursing home and who have English as a second language, and so on.

We also believe that it would be good opportunity for the Nursing Homes Branch to see some of the things around the home with perhaps a broader context than an inspection might show. Inspection, I think, necessarily focuses on measurable kinds of things. It would be an opportunity to hear the perceptions of families and residents, staff, and others about personal relationships and other things that might be of great importance.

It also would provide some notice to residents and families where licensing of the home was really going to be an issue. In the current system there is really no guarantee that where a decision may be made not to renew a licence that there will be any advance notice to families.

Besides the hearing, which we would agree with the NDP amendments should not necessarily be every year, but perhaps, I think, three years is suggested in the NDP motion. I would also like to raise the question of what happens if you make a submission to the director, a substantial submission, indicating that one of the criteria for not renewing the licence has been met, and the director has an obligation in the Act to consider it but it does not really provide a remedy. If the director still makes the decision, you disagree with it.

Accordingly, we propose that there be the possibility of an application for relief to appeal to the Nursing Homes Review Board by an outside party, somewhat along the lines of existing procedures at the Ontario Municipal Board. At that level - I am not an expert in OMB by any means - we understand the OMB has jurisdiction that weed-out or prevent hearings that are not based on any substantial considerations, but could allow one that was.

On the Residents' Council Advisory Committees, and the Residents' Council Advisors. The first point that we would like to stress is that the Residents' Council process, in our view, should be strongly supported and encouraged. That support should be provided to Residents' Councils to get

community involvement and to get professional and technical assistance as required. I believe a number of groups have addressed that, but a number of groups have also addressed concerns with the way this particular model is proposed to be set out in the legislation.

And really what it comes down to is that Concerned Friends would ask the parties to consider whether it might not be better to provide support to the Residents' Councils to get community involvement and to get outside assistance without putting such specific rules and so on in legislation.

We do agree that some of the safeguards for Residents' Councils that exist right now in the regulations should be brought over into the legislation, but to go beyond, or to have specific rules about how the Committees have to be set up to advise them from the community concerns us. And perhaps even more what concerns us, is the role of the Ministry of Health in setting up this process including appointing the committee members and appointing the advisors.

Right now the whole question of how external monitoring and advocacy can be provided to vulnerable people is being reviewed on a number of fronts, but most notably by Father Sean O'Sullivan.

Also, on the important questions of independence and how things should be structured, there is an important rule here. A review of the psychiatric patient advocate program being conducted by Professor Manson. We would suggest before a model is embodied in legislation that it might make sense to wait and see what these reviews have to say. Also note that, to our knowledge, there has been no detailed review of the operation of the existing Residents' Councils and while, I regret I was not here for their presentation, we understand that there were concerns expressed by the Ontario Association of Residents' Councils.

Some of the things which need to be addressed in this area, we believe, are; first of all, again, while the general concept does seem to be a good one in providing support and so on, you sort of set up one system for nursing homes and then another for homes for the aged, and another for rest homes and retirement homes.

If it is set up under the Ministry of Health with Ministry of Health direction at least to some extent, you have to start again, when you come to homes for the aged. Is there something being put into the legislation that will have to be undone when, say, the Extended Care Act is brought forward by Mr. Van Horne's department?

Again, Concerned Friends has strongly taken the

position in the Advocacy Ontario brief about independence and that has been addressed by a number of community groups, and also independence, notwithstanding that it is a bit different concept, is addressed in the Conservative discussion paper, "Patients' Rights", to which Joan has already referred.

If there is a model set up where Ministry of Health officials are making the decisions about funding, we still see a lack of independence and, again, in summary I guess our position is: Assist the Residents' Council, assist the Provincial Association, give them the support they need, and not necessarily to lock it into one model at this time.

We would also say that a motion be moved by Mr. Andrewes we believe moves some way in the right direction, although, it would still need a bit more in the statute than we would like, and would still leave the specific reference to Ministry of Health appointing, rather than the Residents' Councils or the Ontario Association of Residents' Councils appointing.

Those are all my comments.

Ms. Fussell: So in conclusion we do favour and support several of the amendments suggested by the various Committee Members, but felt too pressed for time to list and discuss each one. Our position, on behalf of residents, is set out in the brief which you received last week and has not altered.

It is our hope that in examining its arguments and those of today that the Province of Ontario can develop legislation to support quality care in nursing homes for those in Ontario who require them.

Thank you.

Mr. Chairman: Thank you, Concerned Friends. Questions? And I remind members that we want the questions to elicit answers and not to have a debate that you can have amongst yourselves tomorrow.

Mr. Cooke?

Mr. Cooke: Thank you, Mr. Chairman.

I would like to ask specifically about the proposed residents' bill of rights and what your position is on the proposed residents' bill of rights that my party will be moving.

Ms. Fussell: Our position is to support the NDP's proposed bill of rights.

Mr. Cooke: Are you satisfied that - I mean, we all understand the difficulty of enforcement under anybody's suggestions of a bill of rights - but are you satisfied that at least this is an adequate first step and that there is some mechanism or the dual mechanism of enforcement at this point?

Ms. Fussell: We are satisfied that it is an adequate first step. I would agree that perhaps it needs further refinement - and we are not drafters of legislation either - but I think that the NDP amendment took all the points that were in our submission and, if anything, improved upon them.

Mr. Cooke: And I would like to ask specifically about the two options that are now before us or will be before us tomorrow on financial disclosure. Which of the two come closer to the position that you have taken or what are the strengths and weaknesses of the two options that are before us tomorrow?

Ms. Fussell: In the main section of it - which is requiring financial accountability of an individual nursing home - we found that the amendments by the government and by the NDP were very similar. We did note that the NDP amendment also required consolidated profit and loss statements for corporations or individuals who own a number of nursing homes, and I think that would be an advantage.

Certainly, with the individual operating profit and loss statements, anyone could add them together and come out with the same answer but it would be advantageous to have them submitted to the Ministry by the corporation, in our view. Also, I thought in the NDP amendment that it is a good idea to have the statements presented to the Legislative Assembly which would have them more publicly available.

We also support the government's original intention to have financial statements posted in the nursing homes. One of the main reasons for having disclosure of the financial matters of nursing homes is that it is one of a number of ways that a consumer can evaluate a nursing home or a consumer who is shopping for a nursing home for a relative - and I do not envy them having to do that - can at least make some comparisons which are indicative to some extent of the care that might be provided in those homes.

Mr. Cooke: I will not ask any questions on reporting, but you will see that I think both the government amendment and the amendment that we are proposing goes half way to what you have suggested last week.

I would just like to point out, because you did make comment about the public hearing process, that there will be a change: Number one, in that we will have to somehow

develop a mechanism of staggering the public hearings on the people that currently have licences. The way it is currently working in our amendment, all nursing homes that currently have licences would have a hearing every three years, but if we started that next year it would all fall in the same years all the time and it would cause the same problem as if we had hearings every year.

And we are not going to suggest that there should be public hearings on the management contracts or the administrators of nursing homes. Currently, as it is worded, that was a mistake. The only time I think that we agreed that there should be public hearings are in your submission was when there was a licence involved, not necessarily for the director or for the management company in terms of public hearings.

Ms. Fussell: Yes, we would agree that public hearings are required for licensing and relicensing, but the public should be notified of changes in administration.

Mr. Chairman: Any other questions? I see none.

Ms. Fussell: It is unusual for Concerned Friends to get off that easily.

Mr. Chairman: Everyone is in a very generous mood today. It will all end tomorrow morning I am sure.

Thank you, again, for your presentation.

Ms. Fussell: Thank you very much, Mr. Chairman, and Members of the Committee.

Mr. Chairman: On behalf of those that have been presented this afternoon, I would like to thank the various people, Mr. Cooke, Mr. Andrewes and Ms. Hart, and the people who have worked behind the scenes to get those amendments out to people so quickly so that they were able to make some kind of an informed response today.

Tomorrow morning at 10:00 we start the clause-by-clause. We will go into the procedures then just as a refresher for people in terms how they are taken, in what order, et cetera, and what is an Order and what is not an Order, and deal with those procedural matters right off and then we will move straight into clause-by-clause.

I know it will not do any good to remind members that the first day is always the most long winded and least precise in what we are doing as people sort of feel out where they are going.

We have a lot of amendments before us and we essentially have slated only six working days to get them

all done. I am not asking you to rush yourselves and, as you know, there are no constraints in the number of times you can speak unless I find you are being redundant and putting the members to sleep.

We stand adjourned until tomorrow at 10.00 a.m.

The Committee adjourned at 3:37 p.m.

CA20N

XC 12

-578

S-79

Government
Public

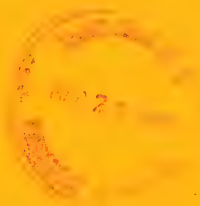
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

WEDNESDAY, MARCH 4, 1987

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Pollock, J. (Hastings-Peterborough PC) for Mr. Baetz

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Reid, R. H., Assistant Deputy Minister, Institutional Health

Sapsford, R. T., Director, Nursing Homes Branch

Johnson, J. M., Director, Legal Services Branch

Campbell, M., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, March 4, 1987

The committee met at 10:30 in room 228.

The Chairman: Call the committee to order, shortly after 10 o'clock. What time is it?

Mr. Callahan: Just before 10:30. 10:29.

The Chairman: We are now to deal with Bill 176 and 177, in that order, the pending bills which we've been having public hearings on. The process that we will follow is as, goes like this.

I will take a section of the act as we have it before us and refer to the section and in some cases read it into the record and in other cases not. If there's an amendment at that time, the clerk will let me know that there is an amendment at which time I will call for it to be placed, in the order of the government amendment first, conservative party amendment second and the NDP amendment third.

The amendments which are, some amendments are acceptable, which change dramatically the nature of the amendment but not to just wipe out amendments. What must be done in that case is to have a vote against the amendment rather than substituting another amendment therefor. But as long as the amendment to the amendment is using part of the amendment that is written, that is generally speaking, in other words, unless it is about different subject matter and is inappropriate that way, we will follow the procedure, if it's all right with the committee members, of not dealing with the definition section to start off with but leaving that until the end after we've decided if there's any additional definitions that we would like to go deal with, and then we will come back to it at that point.

At any time it is possible for members to suggest that a given section be stood down, and if there's an agreement on that, then we would stand it down until such time as people are ready to deal with it. It is also possible for us to vote on sections without closing them off entirely, if you wish to do that and wish to go back to them later on. It just takes, generally speaking, a consensus to reopen.

There's a couple other things. One other thing is that if there's matters which are not residing within the bill and members wish to deal with, they cannot be moved as

motions to amend the act that's before us. But if there's instructions through the chair, as we've had in other committees, on matters related to what we're dealing with but not covered by the act, and there have been a number of suggestions about that having been raised by witnesses and others, that is possible to be dealt with after we have done it clause by clause.

On votes, the route we'll be taking is that when I'm convinced that there is no further debate that is required or that people, or somebody calls the question, we'll test the committee on whether or not we should proceed. If at any time you wish to avail yourselves of the possibility of getting in all the members on a vote, you have, by notifying me of your intention, you have up to 20 minutes to get those members in before we hold a vote on a key matter if there's some members out of the room. Otherwise, I'll move to a vote as it comes up, at that time, unless I hear otherwise from you.

And, finally, if you want a vote recorded on any individual matter, you must request it before we start to take the vote itself.

Any questions about how we would operate? The other thing is if a government member were to come out on a section and there are other amendments from the other two parties, I would accept the government's amendment first. If there was a subamendment to that amendment, then we would take the subamendment and take a vote on the subamendment before taking any government amendment. But we can't just replace a government amendment with an opposition amendment. It has to actually amend, be a subamendment to the government amendment.

Questions? If not, then let's proceed.

The first section we will stand down, that is the section with the definitions of committee, equity share and security interest, in case there are other definitions which you would like to include.

Subsection (2), or Section (2) will be stood down as well, right down to and including Subsection (4).

So we would now move on to Section 2, which has to do with "the said act is amended by adding thereto the following section," and then following from that is the whole list of principles that have been, that are in the listing of the bill before us. And we have an amendment on this section from the NDP before us.

Mr. Cooke: That's the contract motion, I think?

The Chairman: The statement of principles.

Mr. Cooke: On the contracts, no? Right, okay, but all of that I understood we were standing down, the statement of principles on the proposed bill of rights.

Ms. Hart: He said that.

The Chairman: I said that, and I have before me, someplace here, no government motion on the section but an NDP motion which essentially changes the principles to rights and has a longer list of rights.

Do you wish to present that now or do you wish to stand down --

Mr. Cooke: I would prefer, Mr. Chairman, if we can stand that down until we've had more opportunity to discuss the matter and deal with it perhaps, well, when the opportunity arises.

The Chairman: I gather there's an agreement from the government on that?

Ms. Hart: Yes.

The Chairman: Mr. Andrewes isn't here right now. Is it your understanding that the caucus agrees as well to stand it down for now?

Mr. Cooke: I think so. I didn't directly talk to Mr. Andrewes about that, but we weren't, he gave me the indication that he wasn't ready to deal with it either, so --

Mr. Pollock: We have no problem with standing it down.

The Chairman: All right. We'll stand it down at this point, if it doesn't cause any difficulties with Mr. Andrewes. So we're standing down what is known as Section 2(1)a.

Now, on Section 3, on page 4 of the existing act which starts off "3(1), Subsection 4(1) of the said act is amended by striking out subsection (2) in the first line and inserting in lieu thereof the following subsections".

There are no amendments there. Can we deal with these, the first four of those?

Mr. Callahan: There are amendments. 4a, is that --

The Chairman: I'm dealing only with Section 3 with subsections. Now, as I understand it, we have one for

3(5) from the government, but we don't have any other before that. And with no discussion on 1, 2, 3 and 4, is there a general agreement there, since there are no amendments, that those should stand?

Ms. Hart: Forgive me, I'm totally lost.

The Chairman: Again, we'll get the hang of this as we go through.

We're on page 4 of the existing bill. We're dealing with Section 3, and what I'm essentially doing is putting to your notice that I have no amendments before me on Subsection (1), Subsection (2), Subsection (3) or Subsection (4), therefore I'm presuming, unless there's some debate about these matters, and there always can be even if there's no amendment, that nobody has an amendment for me. And that our first amendment actually comes at the next subsection of 3.

Okay. Any discussion? None.

So I would understand that Subsections 1, 2, 3 and 4 are carried? Carried, thank you.

Subsection 5 of Subsection 3, there are government motions. Who will be giving the government motions? Do you move, Mr. Reycraft?

Mr. Reycraft: Mr. Chairman, I move that Subsection (4), (4a) of the act as set out in Subsection 3(5) of the bill be amended by striking out "in Ontario" in the second and third lines of clause (a), and the third line of clause (b), and by inserting in lieu thereof in each case, "one, in the area, two, in the area or any other area or, three, in Ontario".

The Chairman: Thank you, Mr. Reycraft. The motion is in order. Would you like to speak to it? Or the parliamentary assistant?

Ms. Hart: Yes, this was a suggestion taken from the interest groups that they wanted more specifically the area to be designated and so we listened to that suggestion, and this amendment was forthcoming.

The Chairman: Mr. Cooke.

Mr. Cooke: I'm just wondering since I have an amendment on this section as well that amends, it would be, the first part of my amendment is exactly the same as the government's and the second part is just an addition and perhaps I should move that as an amendment to the amendment now with a vote from the floor.

The Chairman: Yes, I suggest you --

Ms. Baldwin: Mr. Cooke, excuse me, I believe your motion to amend is doing the same thing as the government's.

Mr. Cooke: Except the second section deals with (b).

Ms. Baldwin: The government's motion deals with (a) and (b).

Mr. Cooke: I'm sorry. The wording, the clause, the one that I have says (4), (4a) only, (4a)(a).

Ms. Baldwin: If you read further, it says "be amended by striking out "in Ontario" in the second and third lines of clause (a), and in the third line of clause (b).

Mr. Cooke: I'm sorry, yes.

The Chairman: Withdrawn?

Mr. Cooke: Yes.

The Chairman: So we have a government motion before us and I gather that there's an agreement from the New Democratic Party caucus on the intent and we'll call the motion.

Any further discussion? None? All those in favour as to Reycraft's amendment to Sub3(5), please indicate? Carried.

We shall have no other amendments to -- I have no amendments to (4a) at all. So (4a), Subsections (a) and (b) shall carry.

Mr. Callahan: As amended?

The Chairman: As amended. Carry.

And I have a motion from Mr. Andrewes, which would come right at that point. Mr. Pollock, would you like to move it?

Mr. Pollock: Move that Subsection 4 of the act as amended by Subsection 3(5) of the bill be further amended by adding the following subsection thereto.

"(4b), for the purpose of clause (4a)(b), the minister shall announce from time to time in the legislature, the desired balance between nonprofit and profit oriented nursing homes and shall grant licences only where by so doing the latest announced desired balance is

being served."

The Chairman: The motion is in order. Any discussion? Mr. Pollock, would you like to speak to that?

Mr. Pollock: No, I really haven't had much of a chance to familiarize myself with any of this.

The Chairman: Mr. Cooke.

Mr. Cooke: Mr. Chairman, I would like to move an amendment to the amendment which would simply remove the words "from time to time" and replace them with "annually".

The Chairman: Do I have this as a -- Mr. Cooke.

Mr. Cooke: It's not an amendment that I had -- this is an amendment -- I had not addressed this subject in my amendments.

The Chairman: It removes --

Mr. Cooke: It removes the words "from time to time" in the second line and replaces it with "annually".

The Chairman: Would you like to speak to your subamendment?

Mr. Cooke: Well, Mr. Chairman, I agree with the principle of Mr. Andrewes' suggestion and what he's basically saying is that one of the criteria for the allotment of nursing home licences is the balance between profit versus nonprofit and in order for the public to have an understanding as to what the desired balance is of the ministry and of the government, then there should be a statement. I would just suggest, so that we can be guaranteed that we get this statement of government policy, that instead of just saying from time to time, we should be specific and say that the statement will be made annually.

The Chairman: Thank you, Mr. Cooke. The discussion of the supplement, Miss Hart.

Ms. Hart: I have, we have no difficulty with the concept of announcing the desired balance of profit versus not-for-profit.

Where we do have some difficulty is with the last part of the amendment and the subamendment which says that "and shall grant licences only where by so doing the latest announced desired balance is being served". And the difficulty with that is because the balance is currently something like 94 percent to 6 percent overbalanced, in favour of for-profit nursing homes.

If the minister has already announced that it's the ministry's policy to encourage not-for-profit homes, if he announces anything, even if he announces the desired balance is 94 to 6, he can't even call for tenders from for-profit operators. All the tenders would have to come, the proposals, would have to come from not-for-profit, and that totally takes away any flexibility in a community. And each community is different, as we know.

As I say, I could live with it, or we could live with it if we just took out that last part.

The Chairman: I might just say in that kind of order, it would be, it is appropriate to move that as an amendment, but not to the subamendment that has been made. We should restrict ourselves, if we can, at this point to the debate on the whole question of "from time to time" versus "annually". That matter being dealt with, it would then be possible to move another subamendment for the purpose that you're indicating and then have the debate on that before we go back to the principle of the main motion.

So if we could restrict ourselves just to discussing the question of whether the words "from time to time" are more effective than the word "annually," or vice versa, that would be helpful at this time. And then we can move to further amendments.

Ms. Hart: Perhaps I could make an observation on that. "Annually" does not cause us any difficulty. It's the last portion that causes us difficulty.

The Chairman: Mr. Reycraft, did you have a comment?

Mr. Reycraft: No, I may have some comments when we get to the point of discussing the amendment, Mr. Chairman.

The Chairman: Mr. Pollock.

Mr. Pollock: I think annually. From time to time seems pretty vague.

The Chairman: Okay. Well, then, I think that we have a consensus. So Mr. Cooke's amendment is carried?

Miss Hart, do you have another subamendment?

Ms. Hart: Yes, I would move -- do you want me to read the whole thing?

The Chairman: No, just, you can say that you move that the words -- I think what you're after is the words

after "nursing homes" --

Ms. Hart: Be removed.

The Chairman: -- be removed? Is that what you're suggesting?

Ms. Hart: Yes, that's exactly what I'm suggesting.

The Chairman: Miss Hart moves that words, all the words following "nursing homes" in the fourth line of 4(b) be removed, be struck out.

Just for those, Mr. Andrewes and Mr. Jackson, who just arrived, we're dealing with Section 3. We have stood down for later consideration the whole question of definitions in the first sections in order to determine later on whether or not there are additional definitions that we may wish. We then moved to the question of the principles section, and Mr. Cooke, who has an amendment on the rights section, asked that we stand that down until later on and there was a consensus that we should do that.

We have now moved on to Section 3. There's been one amendment passed to Sub 3(5), two amendments, one amendment passed, and we're now dealing with your motion, Mr. Andrewes, which has been put down by Mr. Pollock, the amendment to Section 3 that you had presented us from before. Mr. Cooke made an amendment to take out the words "from time to time" and replace them with "annually," and that's been passed.

And now we've just received an amendment from Miss Hart which suggests that all the words following the words "nursing homes" in the fourth line of (4)(b) be struck. And Miss Hart would like to speak?

Ms. Hart: The reason that I proposed that the last several lines of Mr. Pollock's amendment be deleted is that if they remain in the bill as it is finally passed, that removes the minister's ability to ask for proposals or to grant licences to operators who are for-profit operators as opposed to nonprofit.

And the minister -- that flexibility is very desirable in our view, particular in communities where there are very few homes and there may not be a not-for-profit proposal. That gives the minister almost the impossible task in serving his announced balance, when he can't even get proposals from not-for-profits. And it's not a policy of this ministry to totally take away from the for-profit sector the ability to bid on and make proposals for nursing home beds.

The Chairman: Mr. Reycraft.

Mr. Reycraft: Mr. Chairman, as Miss Hart has pointed out, if the amendment as it is before us, as it was before us, was passed, it would completely remove from the minister any flexibility. And I appreciate the objective here, but there are some real problems in putting legislation in place that is that rigid, and I would perhaps just like to describe a couple of scenarios that I think are very possible that would become disadvantageous to particular communities.

If a well-defined need for nursing home beds in a particular area was identified and a call for proposals from the minister went out, it is possible that the only proposals that would be submitted would be those from for-profit operators. It's possible that there might not be any from the not-for-profit operators. In that case, if the minister was bound by this legislation, he would be unable to, be unable to allocate those or to approve such a proposal, and the community that needed the beds wouldn't get them.

The second, the other scenario I would describe is one where perhaps two proposals or an equal number of proposals was received, where it was obvious that the proposals from the for-profit operators were superior to those from the nonprofit organizations because of their financial base or whatever. In that case, the minister would have to approve, if the legislation was as Mr. Cooke has proposed, the minister would have to approve an inferior proposal as opposed to one that was obviously much better.

So I don't think it's appropriate to tie the minister's hands in the way that this legislation is worded.

The Chairman: Mr. Andrewes?

Mr. Andrewes: Thank you. Mr. Chairman, can I be clear now on Miss Hart's amendment, what the subsection would say. It would say "for the purpose of clause (4a)(b), the minister shall announce annually in the legislature the desired balance between profit and nonprofit nursing homes?"

The Chairman: Yes.

Mr. Andrewes: That is essentially -- we would stop at that point. The purpose of this amendment, of course, is to clarify what the whole question of balance, what that means, and to send a, I think, a very clear signal to the providers of this type of care, to signal to them what the government's policy on the award of tender

might be.

And although I perhaps feel strongly with respect to the last two lines, I listened carefully to the concerns that Mr. Reycraft had uttered. I think what my main motive in proposing this amendment is is to elicit a statement from the government as to what it means by balance, and I'm prepared to accept Miss Hart's amendment.

The Chairman: Thank you, Mr. Andrewes. Mr. Cooke.

Mr. Cooke: Well, Mr. Chairman, I'm put in the awkward position of saying that Mr. Andrewes' amendment should not be amended further, that he was right in the first place, and I guess I look at this and I, the government is allowed to announce a policy, but then they don't have to live up to their policy.

And it seems to me that that is inappropriate, if in fact this government has a policy of trying to create a more balanced method of delivering nursing home beds in this province, then they should be held accountable to deliver on that.

I would prefer, if we're going to give more flexibility, which I don't like to do, but if we're going to go in that direction, I would like to look at a third option rather than the one proposed by Miss Hart, and that is adding on to the end some wording that say "unless the ministry gives in writing the reasons why this cannot be achieved in this area of the province," something along those lines. That way it puts the onus on the ministry not to have this great flexibility where they basically can say, "this is what we'd like to do" and then go ahead and do whatever they want to do in a community.

But it would put the onus on the ministry to make an announcement of policy, and then if they're going to break that policy in any particular region of the province, to spell out for public scrutiny the reasons why they can't fulfill that policy. And the onus would then be put on the ministry, rather than there not being any onus at all, to explain why they're not following their own policy as enunciated on an annual basis.

So I would just suggest to Mr. Andrewes that perhaps the best thing to do is to oppose the amendment that's now on the floor and do that kind of amendment that would give the flexibility but would keep the accountability, the political accountability, with the minister for an explanation of why his own policy is not being followed.

The Chairman: Mr. Reycraft.

Mr. Reyecraft: Mr. Chairman, in response to Mr. Cooke's suggestion, I would put forward the fact that he and others have the frequent opportunity of ensuring the minister's accountability and getting a response from the, not just from the ministry, but from the minister in written form and in the form of Hansard, and an amendment such as he's proposing really isn't necessary.

If the ministry's goal is clearly stated and he or others perceive that the ministry is not pursuing that goal, then they have an opportunity to question the minister to ascertain why and to get him to indicate to them why he's deviated from an announced policy.

The Chairman: Thank you. Any further speakers? If not, we will take the motion before us, which is by Miss Hart, that the words following "nursing homes" in the fourth line be stricken.

All those in favour please indicate. Down? Motion carries.

Mr. Cooke: There are some of us down.

The Chairman: It's not a recorded vote unless you ask for it. And I can count. All right. So the motion, Mr. Pollock's motion, as amended, carries? Carried. It stands in the bill as indicated.

Subsection (6), I have no amendments for that. Section 3, Subsection (6), I have no amendments. Any discussion? This is the grounds for refusal. I don't think I have any amendments now until we get to Subsection 4.

Mr. Andrewes: Mr. Chairman, the particular amendment -- I see, I'm sorry. It is 4?

The Chairman: It is 4. So essentially what we can deal with now since I don't have any amendments would be Subsection (6), which has within it Sub (5) of said act which is the refusal to issue a licence where in the director's opinion, et cetera, and certain things follow. Any discussion?

All those in favour of Subsection (6), please indicate? Carried.

Subsection (7), as stood forward, is the matter of "4(8) of said act is repealed". All those in favour, please indicate? Opposed?

And now we're up to Section -- so Section 3 as amended carries? Carried.

Section 4. As far as I know, there's no amendment to 4a, b, or c before me. Is there any discussion on sections 4a, 4b, or 4c?

If there is none, all those sections carry?
Carried.

All right. 4d, I have -- it's Subsection (3) of this that I have. Do you want me to do the first two subsections first and then move on to do --

"Subsection 4d(1), "where a licensee is a corporation, the licensee shall notify the director in writing within fifteen days of any change in the officers or directors of the corporation".

Any discussion? Shall the section carry? Carried.

Subsection (2), "where the corporation has an interest in a licence, and the corporation or its officers or directors have reason to believe that an issue or transfer of equity shares of its capital stock or the happening of a condition by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the person shall so notify the director forthwith".

Any discussion? Section carried? Carried.

Sub (3), I have an amendment from Mr. Cooke. Mr. Cooke.

Mr. Cooke: Mr. Chairman, I move that subsection 4d(3) of the act as set out in Section 4 of the bill be amended by striking out "from time to time, in writing, may" in the first line and inserting in lieu thereof "annually, in writing, shall".

All this does is change the section from being permissive and not specifying the times in which the director shall request this information.

The Chairman: Thank you, Mr. Cooke. Any other comments? Miss Hart?

Ms. Hart: We have no difficulty with that.

Mr. Andrewes: No problem.

The Chairman: Mr. Cooke's amendment carries? All those in favour? Carried. So Subsection (3) as amended carried. Carried.

So Subsection 4d as amended carried?

Mr. Cooke: I have an amendment to 4d, I believe.

The Chairman: Oh, do you? 4d(4), right. Sorry about that.

Mr. Cooke: I move that Section 4d of the act as set out in Section 4 of the bill be amended by adding thereto the following subsection. "The director may require the information described in Subsection (3) to be provided more frequently than annually if the director's opinion," or rather, "if in the director's opinion, it is reasonably necessary for the purposes set out in Subsection (3)".

The Chairman: In order. Speak to it?

Mr. Cooke: Basically, Mr. Chairman, this is just simply to give the director some flexibility. If there's a reason for requesting this information more frequently, then the director has the power to do so.

The Chairman: Any further discussion?

Ms. Hart: We have no problems with that.

The Chairman: Any other discussion? If there's none, all those in favour of Mr. Cooke's motion? Carried.

Now, I guess I can say, Subsection 4d as amended carried? Carried.

Section 4e. Mr. Andrewes.

Mr. Andrewes: It's after the fact now, Mr. Chairman, but rather than passing this amendment 4d(4), simply just strike out "annually" and say "the director in writing may direct the corporation" -- I'll leave it, but it probably would be more tidy. It would give the director the desired flexibility that you're after.

Mr. Cooke: There's a minimum in there now and --

Mr. Andrewes: All right.

The Chairman: Subsection 4e, I don't think I have any amendments before me for that. So 4e, which is the security interest sections, any discussion? None. Shall 4e carry? Carry.

4f, this will be in terms of management of the nursing home, et cetera, without the approval of the director. Any discussion? None. So shall 4f carry? Carried.

And now 4g as proposed by the government. Who would

like to move this?

Mr. Reycraft: Mr. Chairman, I move that Section 4 of the bill as amended by, be amended by adding thereto at the end the following as Section 4g of the act. "4g(1), the director shall not issue a licence, undertake to issue a licence under Section 4a, refuse a licence under Section 4b, reissue a licence so as to authorize the relocation of a nursing home or approve an issue or transfer of shares under Section 4e until 30 days after public notice of the request to do so has been given in accordance with this section.

(2), a person requesting that the director refuse a licence or give an approval as referred to" --

Mr. Carrozza: Both of them says reissue.

Mr. Reycraft: Sorry, Mr. Chairman. Is this a defective copy here? Perhaps I have a copy that is not accurate.

Mr. Carrozza: It's not accurate.

Mr. Reycraft: It certainly is. It does not. Mr. Chairman, should I --

The Chairman: It would be wise to just withdraw the motion that has been put forward at this point and I suggest you start again.

Mr. Reycraft: You wish me to start over?

The Chairman: I think that would be the easiest thing.

Mr. Reycraft: I move, Mr. Chairman, that Section 4 of the bill be amended by adding thereto at the end, the following Section 4g of the act. "4g(1), the director shall not issue a licence, undertake to issue a licence under Section 4a, reissue a licence under Section 4b, reissue a licence so as to authorize the relocation of a nursing home or approve an issue or transfer of shares under Section 4e --"

Mr. Carrozza: C.

Mr. Reycraft: -- "c, until 30 days after public notice of the request to do so has been given in accordance with this section.

(2), a person requesting that the director reissue a licence or give an approval, as referred to in Subsection (1), shall post a notice of the request in a prominent place in the nursing home, shall cause the notice to be

published in a newspaper having general circulation in the area where the nursing home is located and shall notify the director of the time and manner that such notice was posted and published.

(3), a person requesting that the director issue or undertake to issue a licence, shall cause notice of the request to be published in a newspaper having general circulation in the area where the nursing home is proposed to be and shall notify the director of the time and manner that such notice was published.

(4), that the notice of request under Subsection (2) or (3) shall contain an explanation of the request being made and shall state that any member of the public may make written submissions to the director concerning whether the request should be approved.

(5), the director shall consider any submissions received under Subsection (4) before making a decision concerning the matter described in Subsection (1)."

The Chairman: Thank you, Mr. Reycraft. I'm hearing some buzzings around me, about a desire to stand down this section. Perhaps the parliamentary assistant can clarify.

Ms. Hart: Yes. I actually was in error in putting this forward at this point. There have been some discussions about whether procedurally it would be better to go with Mr. Cooke's amendment as opposed to trying to amend a government amendment. It looks like that might be easier, so perhaps what we could do is ask the committee to stand it down until we have some wording to present to the committee.

The Chairman: You want to stand it down, and as I understand is then move Mr. Cooke's 4g and then some subsequent change to that, is that what has happened?

Ms. Hart: Yes.

The Chairman: There's probably, there's no reason why you can't just withdraw this instead of standing it down, and then if the other were to fail, we could reintroduce this, which would be fine.

Ms. Hart: Very well.

The Chairman: So why don't we just thank Mr. Reycraft very much for his reading, the two attempts, and the third time if you're asked, just be a little more sonorous.

So do you agree to withdraw, Mr. Reycraft?

Mr. Reycraft: I will withdraw, Mr. Chairman.

The Chairman: Mr. Cooke, do you have a motion for us?

Mr. Cooke: I have one on 4g, which is not the same issue, and there's then a 4h, which is the same issue.

The Chairman: Well, we'll deal with your --

Mr. Cooke: 4g?

The Chairman: 4g first, yes.

Mr. Cooke: Okay. I move that Section 4 of the bill be amended by adding thereto -- I guess I should read my own and not the government amendment. I move that the act as amended by section, be amended, as amended by Section 4 of the bill be further amended by adding thereto the following section.

"4g(1), a licensee shall not appoint an administrator of a nursing home or any person who carries out the functions of an administrator without the approval of the director.

(2), in deciding whether to approve an appointment described in Subsection (1), the director shall treat the person to be appointed, as if the person were an applicant for a licence, and Subsections 4(1) and (2) and clauses (4), (5), b, c and d apply with necessary modifications."

The Chairman: Mr. Cooke, would you like to speak to this motion?

Mr. Cooke: Mr. Chairman, this is simply an amendment that recognizes the important role that the administrator plays in the running of a nursing home and suggests that there should be criteria and approvals before an administrator is approved by the ministry for that particular position.

If in fact we go through a process of licencing the owners to carry out the functions of running a nursing home, it seems to me that since the administrators of the home are responsible as well for carrying out the act, that the background of the administrator as well as the record that the administrator may have with other nursing homes or other nursing home chains should be taken into consideration.

I think there should be a mechanism of approval from the ministry. The nursing home would obviously do the

hiring. The nursing home would then simply apply to the ministry and indicate that they are hiring an administrator, and the director would be able to approve that person.

So it's recognizing the most important, a very important role that the administrator has of either making the nursing home work or in fact making the nursing home an uncomfortable place in which to live. Without a good administrator, obviously a nursing home can't function properly and can't meet the requirements of the act.

The Chairman: Miss Hart.

Ms. Hart: Yes, Mr. Chairman. I have a couple of major difficulties with this proposal. One is the whole conflict of interest problem. What the section proposes is that the minister or the ministry standing, first of all, and saying, "Yes, we approve an administrator, and then if that administrator doesn't work out, we'll also prosecute the same administrator". That puts us in a real quandry.

What is the minister to do, set out criteria as to who can be an administrator? All that does is say everybody has to be an MDA in nursing administration, which is the highest possible criteria. That rules out the lady who runs a perfectly, in fact a very high quality nursing home. She only has eleven beds and the quality of care is very high, but she doesn't have all the academic qualifications.

So we won't be supporting this proposal. And I, one thing before I conclude, it's not as if we currently licence administrators. We don't, nor do we, for the most part, approve hospital administrators. We feel that this is just going a little too far.

The Chairman: Mr. Andrewes.

Mr. Andrewes: I just want some clarification. Miss Hart talks about setting criteria. What is the impact of the Subsection (2), when you're drawing all the implications of Subsections 4(1) and (2) and clauses (4), (5), b, c, and d?

Mr. Jackson: It's a manner of removing their licence, the way I read it.

Mr. Cooke: If the director wasn't approved then refused to --

The Chairman: I think this has been posed as a question --

Mr. Andrewes: Yes, I posed this question to Mr.

Cooke.

Mr. Cooke: I'm sorry, I thought you were -- the criteria would be similar. What we're basically doing with this amendment is saying that under the nursing home act, not only the licensee could be charged but the administrator could be charged, which is what happens now. And if that is the case, if we accept that there are some parallels, then criteria that applied to the issuing of the licence should also apply to the approval of an administrator.

The Chairman: Mr. Jackson.

Mr. Jackson: If I can continue on and point out, I'm having difficulty with the sections that I see that deal with removal of the licence. But where does it deal with the criteria for appointing the administrator? And is there a section in the act, and maybe legal counsel can advise, where a nursing home must maintain an administrator? And if they do, to what extent is the government at risk turning down several applications?

And what is the position that the nursing home operator is in when their administrators are being put up a flagpole and the government is not saluting. What is the position?

Mr. Campbell: The act and regulations provide that unless the administrator placed -- the difficulty with the concept in a technical sense, it would give the licensee an excuse to say, "Oh, I regret, I hired an incompetent administrator. Therefore, give me another chance." The ministry might find itself estopped in any revocation proceedings from going after a licensee on the basis that we had in fact approved it.

So in the sense that there is a major enforcement problem in a technical sense in adding yet another line, a person who can in a sense be a fall guy.

Mr. Jackson: I am not only having trouble interpreting the intent, I'm also having trouble interpreting how it's going to work. So what you're telling me is that the legal requirement to have administrators, that the owners of the nursing home are in a position where the government can turn down their administrator or maybe they rubberstamp every one that's brought to their attention.

Mr. Campbell: I presume that if the licensee puts forward an application on behalf of the administrator and for one reason or another, the ministry rejects it, then the licensee would be able to seek another administrator until such time as they're accepted.

Mr. Jackson: My final question, would then the nursing home operator need some protection by virtue of the fact that he's unable to get an administrator at that point and he's running a nursing home without an administrator?

Mr. Campbell: Quite frankly, there's a gap in that the licensee, having an obligation, and for a period of months perhaps being unable to obtain and hire an effective administrator would be a potential risk.

Mr. Jackson: So you need to create language in the regulation?

Mr. Campbell: A temporary administrator, or something like that, so that the licensee should be deemed to be the administrator pending or something of that sort. There is a real gap there.

Mr. Jackson: Thank you.

The Chairman: Mr. Cordiano.

Mr. Cordiano: I think the point's been covered. I just wanted to reiterate some areas. What I had pointed out yesterday is the fact that there's one more layer for the nursing home licensee to put between himself and the administrator, and that is in the form of the administrator. The responsibility really falls squarely on the administrator's shoulders and he'll take the blame largely for any of the misgivings, or the inappropriateness of the operations of the nursing home, and you won't be able to get to the licensee as quickly as you would otherwise.

The Chairman: Thank you, Mr. Cordiano. Mr. Cooke.

Mr. Cooke: I'd just like to point out to -- I'm not quite sure. I'm not a lawyer, so maybe I don't understand the fine, legal detail.

But the ministry now licences the nursing home and they obviously have to approve the licensee. There is additional criteria in the new legislation that sets out what the minister takes into consideration in who gets a licence and whether a licence is renewed.

Now, the same type of criteria, the same types of things could be taken into consideration for approving an administrator, and I'm not sure that I understand why that would be a line of defence for the nursing home when they're not in compliance with the act and have been charged, if in fact the same types of rules apply when they're approving a licence.

If the nursing home owner could use as a line of defence that the administrator wasn't administering the home properly and therefore that's why the act was broken and therefore we can't be convicted, why would they not be able to use the defence that the ministry also approved the licence? I mean, it's the same type of process. They approve the licensee now.

The Chairman: Would you like to try that, Mr. Johnson?

Mr. Johnson: I think the difference is that if we have a hand in appointing and designating and approving the administrator, then we would have, as it were, taken a measure of responsibility, whereas in the absence of that, the licensee is fit, in my view, under the act, with total responsibility for the home. But once we begin to interfere in that aspect of management, then he is entitled to say, "I was unable to hire the administrator who would have done my job for me". And we would fear that that would allow for delays and problems when we get into the revocation process.

Mr. Cooke: The difficulty I have is I have one example in my own riding and there certainly have been others. But the former administrator of the Tecumseh Nursing Home in that great new riding of Windsor-Riverside, came from the, he used to be the manager of the camera department at K-Mart. And then he became the administrator of this nursing home, which is a sizable nursing home in the community.

He is no longer there, but there's nothing in the act that prohibits him from becoming the administrator, somebody who has absolutely no experience, no understanding, and no qualifications, in my view, of running a nursing home.

But that's quite possible, and that's the reason for this amendment, that the ministry, I think, has a role to play. However, I can read the writing on the wall, Mr. Chairman, and let's take the vote.

The Chairman: I have another speaker. Mr. Andrewes.

Mr. Andrewes: Mr. Chairman, I see what Mr. Cooke is trying to get at and I just wonder if it wouldn't be easier at some point in time in these amendments to set out the requirements, the criteria, for a nursing home administrator, rather than tying up some other, rather complicated formula, which the director is compelled to scrutinize the administrator's qualifications and to possibly delay the intent and the implementation of this

act.

The Chairman: Mr. Jackson, do you have any questions? Miss Hart.

Ms. Hart: Just dealing with Mr. Andrewes' point, there are already criteria set out in the regulations that say that, say what age the administrators have to be and what examinations they have to undergo, and that's Section 78, I'm sorry, 79 of the current regulations.

Mr. Andrewes: Does it say that the manager of a camera department at K-Mart can't be an administrator?

Ms. Hart: No, of course not.

Yes, Subsection (2) speaks of "every nursing home shall only employ as an administrator a person who is enrolled in the Long-Term Care, Organization and Management Course given by the Canadian Hospital Association".

The Chairman: Further discussion? Seeing none, we'll take the motion. Do you need me to reread it to you or are you aware that it's Mr. Cooke's motion, Subsection 4g to Section 4, to deal with the approval of administrators.

All those in favour of Mr. Cooke's motion, please indicate. Two. Down. All those opposed? Motion is defeated.

Now, I presume, therefore, Mr. Cooke that your new 4h, which you just circulated, becomes your new 4g?

Mr. Cooke: Right.

The Chairman: Would you like to move it? And this is the one --

Mr. Cooke: I think they would like to have a chance to look at it, so could we stand it down?

I might just for the members of the committee point out that the changes that --

The Chairman: Changes in what, Mr. Cooke?

Mr. Cooke: Changes from the one that was filed with the clerk on Friday.

The Chairman: Might I suggest that the thing to do, because we will have had it known as a motion, a government motion withdrawn, we'd like you to read it into the record and then stand it down and then, or speak to it and then stand it down, if you like. But we can't talk

about something that doesn't exist.

Mr. Cooke: I think the difficulty, Mr. Chairman, is that there's going to be further changes, so that there will have to be a further amendment that will, instead of having the three years that is proposed be changed to five.

The Chairman: I can't imagine what you're talking about unless you tell me what you've got. Why don't you just read to me the motion and explain to me what you think the problems are with it.

Mr. Cooke: All right. I just didn't want to do what Mr. Reycraft had to do.

I move that Section 4 of the bill be amended by adding thereto at the end of Section 4g, I guess, of the act, and this will become 4g.

"4g(1), the director shall not issue a licence, undertake to issue a licence under Section 4a, reissue a licence under Section 4b, approve an issue or transfer of shares under Section 4c, or approve the exercise of a security interest under Section 4e, unless the public has been given notice of their request to do so and an opportunity to make submissions in accordance with this section.

(2), the first time a licence is considered for renewal after the coming of the force of this act and every third time thereafter that the licence is considered for renewal, the director shall not renew the licence unless the public has been given notice of the request to do so and an opportunity to make submissions in accordance with this section.

(3), notwithstanding Subsection (2), the director may delay the first application of Subsection (2) in respect of a licence that exists at the time this act comes in force until the second or third time after the coming into force of this act that the licence is considered for renewal.

(4), before making a decision concerning a matter described in Subsection (1) or (2), the director shall cause public meeting to be held concerning the request and that the meeting shall be held in an area where the nursing home is located or intended to be located..

(5), if the director is not able to chair the meeting, the public meeting, the director shall designate a representative of the ministry to do so and the representative shall prepare and give the director a written report containing the names of each person speaking and a summary of that person's oral submissions.

(6), at least 30 days before the public meeting is held, the director shall cause a notice inviting submissions to be published in a newspaper having general circulation in the area where the nursing home is located or intended to be located and the notice shall (a) contain a detailed explanation of the request being made and the reasons for it and (b) invite any person interested in making oral submissions to attend the meeting and express his or her opinions and recommendations concerning the request; (c) state that any person may make written submissions to the director concerning the request and (d) state that the director will consider any oral or written submissions so made before making a decision.

(7), where the request concerns an existing nursing home, the director shall give a copy of the notice described in Subsection (5) to the licensee, and the licensee shall cause it to be posted in a conspicuous place in the nursing home.

And (8), the director shall consider any submissions received under this section before making a decision concerning a matter described in Subsection (1) or (2)."

The Chairman: Would you like to explain its deficiencies and why you'd like us to stand down --

Mr. Cooke: Well, there are really no deficiencies in it at all, Mr. Chairman, but in the effort to again present it --

Mr. Callahan: Just tell us before that, is the only addition to that the notwithstanding section in relation to the one you filed originally?

Mr. Cooke: The difference is that instead of, the difficulty was that in the original submission, we would have a public meeting every three years, but it was worded in such a way that the first public meeting would occur now and it would be every three years. So every nursing home would be heard every three years and you'd have 300 and something hearings.

So the attempt is to stagger the hearings so that there will be a certain number of hearings each year.

In discussing the matter with other members of the committee, we'll be looking at a further amendment that would set out that in a five-year period instead. We don't obviously want to, we don't obviously want to have a large number of hearings that become unmanageable.

But I think that the purpose of this section is to allow for public accountability, local accountability and

the opportunity for individuals to make submissions to a director in a way that their concerns will become known to the director.

And also, I quite frankly think that the public meeting process is better than the written submission process because with local media and newspapers covering the meetings, there is an automatic conditional, additional step of accountability, that the nursing home is going to want to avoid any negative, adverse press about the quality of care, the quality of life in the nursing home, and that this additional step will assist in improving the quality of life and the quality of care in nursing homes.

The Chairman: I'm gathering that you're suggesting that we stand down the discussion of this until later. Is there a consensus on that?

Mr. Cooke: If I could ask if legal counsel could just simply look at the section that staggers the meetings and the requirement of every third year, and perhaps if we could just get a change of drafting that would change that to every five-year period instead.

That's the basic change as I understand that the government would like to see.

Mr. Campbell: Are you contemplating that 20 percent of the nursing homes every year?

Mr. Cooke: Right.

Mr. Campbell: I think the wording would have to be adjusted substantially then because this would read, basically, all of the meetings earlier, it seems to me.

Mr. Cooke: No, because Section 3 that says, that phases it in.

Mr. Campbell: Can we perhaps work that out over lunch?

Mr. Cooke: Sure.

The Chairman: My suggestion would be, it sounds like there's only two sections, subsections that are going to be touched by the amendment. Why don't we just leave it, stand it down and leave the further discussion on Section 4 until after the break, and we will complete whatever it is we're dealing with at that time and then come back to this matter at that point. Agreed?

So we now will leave Section 4 open, as I say, and move on to Section 5. Under section 5, we are including a new -- will you help me with this, Mr. Cooke? Your motion

that I have here, Section 5 clause 5(b) of the act is to become a new section following 5 that we have here with a sub (d) or does it become a new sub (b) before the -- does it come right now, is what I'm basically asking?

Mr. Callahan: I thought it was (d) instead of (b). I don't know.

Ms. Baldwin: There is a replacement amendment to the one that was -- he has an amendment to 5(d) of the act, which is the first one that comes up --

The Chairman: I'm just a little confused as to what the perception should be -- oh, there's a new replacement?

Ms. Baldwin: And the reason for the replacement is that that should have said (f) instead of (b).

The Chairman: Okay. So here we are. We're now at 5(d), for which I have no amendments.

Ms. Baldwin: I believe there is one.

The Chairman: Yes. So as to Section 5 sub (d), as found in the initial amendment package for Mr. Cooke and the second one that we're now coming up to would be for clause (d). Would you like to -- and the one that he had prior to that will now be renumbered for (f).

Mr. Cooke?

Mr. Cooke: I move that clause 5(d) of the act as set out in Section 5 of the bill be struck out and the following substituted therefor, "the conduct of the licensee, or administrator or where the licensee is a corporation, its officers or directors or persons with a controlling interest in it or the conduct of officers or directors or the persons with controlling interests in the management corporation, affords reasonable grounds for the belief that the home is not being or will not be operated in accordance with the law and with honesty and integrity."

The Chairman: Thank you.

Mr. Cooke: It simply adds the criteria, additional criteria for the revocation or the, rather the relicensing of a nursing home, matters to be considered, criteria for the management company, adding the management company and administrator.

The Chairman: Thank you. Miss Hart.

Ms. Hart: Yes, the concern we have about adding administrators is the one that was expressed previously,

that once you put another level in there, you are watering down the obligations of the licensee, and we wouldn't like a court to say because you've got an administrator in there, you can't catch the licensee.

We also have a problem with the, or the conduct of the officers or directors or persons with controlling interest in the management corporation. That's very loose kind of wording, and I think that it goes much further than is necessary to protect the interests of nursing home residents.

Mr. Cooke: What would you be suggesting then?

Ms. Hart: That we stick with --

The Chairman: That we stick with what is there at the present time.

Mr. Cooke: So under the current criteria, we cannot consider either the administrator or the management company?

Ms. Hart: Let me respond to that. That's not so in our view. The conduct of the administrator is, must be considered, but in the context of the licensee being responsible for the conduct of the administrator. Our concern is by putting the word administrator in there, you've watered it down. It wouldn't necessarily be considered, because the licensee is responsible for anything that happens in the home.

Mr. Andrewes: What you're saying, the way it is now is that it's a package.

Ms. Hart: Yes.

Mr. Andrewes: It's assumed that the administrator, the management company, are all part of the consideration of the licensee's ability to run that nursing home?

Ms. Hart: That's correct.

The Chairman: Anything further?

Mr. Cooke: Well, I don't, again, not being a lawyer, I'm not, I am not clear at all in the legal niceties, but it seems to me that there are three key players in the operation of a nursing home; the administrator, the management company, if there is one, and as I understand it in Ontario, there's over 100 nursing homes that have management companies, and also, obviously, the owners or the licensee.

And I think it would be appropriate to set that out as additional criteria which sets out the guidelines for the ministry and makes it clear to the public as to the main players in the operation of a nursing home. And that all of these people will be closely scrutinized in order to, in the determination of renewal of the licence.

I understand the arguments of the parliamentary assistant, saying that that is in fact what happens now. Obviously, a large number of groups that came before us and had talked to us in the past about the operation of nursing homes don't agree that it has been adequately considered over the years and that it should be set out as being mandatory for setting out the criteria.

I assume when we're dealing with 5(d), that the same arguments apply to 5(e)?

Ms. Hart: Yes, that's correct.

The Chairman: Further discussion.

Mr. Cooke: I think it's important, Mr. Chairman, that we start -- I mean, one of the problems with this act is that too much of it has just been very loose and people haven't known what the criteria is.

And this is just simply another attempt to try to clearly set out, not only for the residents of nursing homes, but obviously from my perspective primarily for the residents and their families, but also for the nursing home operators to set out exactly what criteria they're operating under, and I think these amendments do that.

The Chairman: Mr. Cordiano.

Mr. Cordiano: In a legal sense of viewing, of specifying an administrator as such, it will not follow that what you've done is just pointed out one individual in a long list of individuals that should and could be part of, part of, or should have the responsibility for the operation of that nursing home.

And I'm specifically asking Mr. Johnson if he would elaborate on that. Is that part of the reason for not wishing to specify any one particular individual or that person's office with respect to the nursing home?

Mr. Johnson: Well, I think the main reason, sir, is the danger of dividing responsibility, that you should be able to say if a home is badly run, that is the licensee's fault, even though he lives in Europe and has a management company in place. He should never be able to say "It's not my fault". And I think if you specify these other people, you create a risk that before the tribunals

and courts you'll get away with that.

And we did encounter in part this problem in the Elm Tree case in the Supreme Court of Ontario.

Mr. Cordiano: Because one argument that we have is you could specify any number of other people in the nursing home and you would encounter the same risk.

Mr. Cooke: But under the act, I mean, there are two people that are primarily responsible and that charges are laid against, the licensee and the administrator. So I mean, you can't compare the role and responsibilities of other people within the nursing home. The people that have charges laid against them, if they break the law, are the administrator and the licensee.

Mr. Cordiano: But speaking in a legal sense, will this go in the courts? You still want the licensee to be ultimately responsible.

Mr. Cooke: The administrator is, too. Right now the procedure is they both have charges laid against them. There's always parallel charges laid against both the administrator and the licensee. If there's 18 charges laid against the licensee, in another case the same 18 charges are laid against the administrator.

Mr. Cordiano: But what we're saying here is that there's no reason to have specified the administrator because as you say, under the act, you charge them both. Then I can't see the reason for going that one step further in this section.

Mr. Cooke: We're talking now about criteria for renewal.

Mr. Cordiano: Could perhaps Mr. Johnson address that in a legal sense with respect to what Mr. Cooke has just said? Or were you not following that?

Mr. Johnson: I'm sorry, I was distracted, and I should get the question straight.

Mr. Cordiano: What we're saying is that parallel charges are laid under the act. The administrator would be charged with similar offences when the charge is laid. Then consequently, he's arguing that it is essential to have the role of administrator defined in this section and his responsibility following this section.

So what he's saying is that we should specify it and that's because he's saying that parallel charges are laid. Am I correct? I'm just trying to interpret your view --

Mr. Cooke: We're dealing with, and I was incorrect a minute ago. We're dealing with the section on revocation and refusal to renew a licence. So when the director determines that in fact they're not going to renew a licence or they're going to revoke a licence, all we're saying is one of the criteria to take into consideration is not only the conduct of the licensee, but also the conduct of the administrator and/or the management company.

The Chairman: Mr. Callahan.

Mr. Callahan: Just carrying that to a point where -- it might never happen, but let's say that a competitor wanted to see a competitor go out of business and arranged to have an administrator go there who is totally incompetent. If you included the administrator in this, it's my understanding that if the administrator is found to be in violation, in breach of duty, that you could in fact take the licence, the refusal to renew the licence for the licensee.

It may very well not be the licensee's problem. I think leaving the obligation -- well, maybe I can go back to that. It's a hypothetical situation --

Mr. Cooke: Pretty bizarre is what it is.

Mr. Callahan: Well, all right. But let's say, that, you know, if you're saying that a breach by, if you want to include, as Mr. Cooke does, the position of administrator, what is really happening is the licensee could very easily be refused a renewal of his licence simply for the actions of the administrator. The ultimate responsibility --

Mr. Cooke: Is that not appropriate?

Mr. Callahan: I think the ultimate responsibility should really be that of the licensee. He's the person who's got the interest in --

Mr. Cooke: That's what happens when you take somebody's licence away, you're saying one of the criteria for taking your licence away is that you've got a rotten administrator.

Mr. Callahan: Well, all right, yes, but I don't think that's the normal trend. I mean, it's not normally accepted as a fact that that's what is going to happen if an employee is found to be inappropriate. I think that the licensee's obligation there is to remove and replace them with someone else.

Mr. Cooke: He's hired them in the first place, then that shows bad judgment on the part of a licensee. So

ultimately, yes, the licensee is responsible for the hiring of an administrator, and these sections are making that quite clear.

The Chairman: Unless the members need further clarification, I'm not sure I'm hearing anything new in this argument as to which is the better way of dealing with this. I'm wondering if it wouldn't be wise to bring it to a vote at this stage? I'm perfectly willing to listen to more debate, but I haven't heard any new argument.

Mr. Cordiano: Mr. Chairman, I don't think it's clear yet. I think we should shed some further light on this, and I was just trying to get the ministry officials to in fact address that point. And I'm not sure if, I'm not sure if I'm making myself clear, but I think there needs to be a further clarification because of the point we were addressing with respect to the administrator being included in this section and what that does in a legal sense, what effect it has in a legal sense.

Mr. Campbell: The whole scheme of the act is predicated on the responsibility of the licensee for the quality of care in a home. The whole scheme of the minister's discretion to grant licences is seeing that the director's power to issue licences and so on is predicated on the part of the licensee.

There are several points. If we interpose yet another stream of managers, whether it be administrators, management corporations or so on, it will, first, dilute the responsibility of a licensee.

Secondly, if we add it in certain sections and not in others, there may be some questions raised as to the rights to go after the licensee in certain situations. And it's difficult to plug in without working right through every single section to see how that would work out in practice.

Thirdly, we deal with the licensee and, to some extent, rely on the judgment and good business sense of the licensee. If the licensee is so foolish as to choose an incompetent administrator or dishonest administrator, or incompetent management corporation or a dishonest management corporation, then we look to the licensee, and we don't bother about our own screening of those people. We say, "if you were foolish to stick to someone who is putting your licence at risk, then you wear it, so be it".

Mr. Cordiano: So in a sense, a licensee could make a case that it was the responsibility of the administrator and not his, and to the point that this section -- yes, he could point to this section and, if this were the section that was passed --

Mr. Campbell: That's correct. It's a -- a very practical problem arises. You may, in the course of attempting to enforce the act where it's not totally plain that there are serious breaches, but we do have some concern, we may call the licensee in. And they will often arrive with their administrator, and from time to time the licensee will blame the administrator for not advising him about what's going on. Sometimes the administrator will say "I didn't get enough direction or resources or what have you".

What we're really dealing with, in a sense, in our meetings now, we say, "Don't tell us your management troubles. You fix it". If we insert this type of additional provision, we'll have that at every single meeting.

So in a crafting sense and from the point of view of the administration, it makes sense to maintain the scheme of the act which speaks at the responsibility of the licensee, and you look to the licensee for performance.

Mr. Cordiano: Thank you.

Mr. Callahan: That's clear.

Mr. Cooke: However, on the other hand --

The Chairman: I remember this from the past argument.

Mr. Cordiano: Well, you may have, but it's important to clarify.

The Chairman: I just listen from time to time. Anything further? We'll take Mr. Cooke's motion to amend Sub, Section 5, clause 5(d). I won't read it again. All those in favour, please indicate? Down. Those opposed? Motion is defeated.

Mr. Cooke, you have a similarly worded motion for 5(e).

Mr. Cooke: Well, Mr. Chairman, I'm not going to go through the same argument. We've had the argument and I'll just put it in motion.

The Chairman: Okay. Now, as I understand it, will Sub (e) carry?

Mr. Callahan: I'm sorry, Mr. Cooke has withdrawn his motion, has he not?

Mr. Cooke: No, I'm placing it.

The Chairman: So Sub (e) as placed in the act carries? Carried.

Sub (f), I gather this is a placement motion. Mr. Cooke?

Mr. Cooke: I move that clause 5(f) of the act as set out in Section 5 of the bill be struck out. I further move that Section 5 of the bill be amended by adding thereto the following subsection.

"(2), Section 5 of the said act is amended by adding thereto the following Subsection (2), the director shall revoke or refuse to renew a nursing home licence where the conduct of the licensee, the administrator or where the licensee is a corporation, its officers or directors, or the persons with the controlling interest in it, or the conduct of the officers or directors or the persons who have a controlling interest in the management corporation have forged reasonable grounds for the belief that the home is being operated or will be operated in a manner which is prejudicial to the health, safety or welfare of its residents."

The Chairman: Mr. Cooke, speak to it.

Mr. Cooke: Mr. Chairman, the purpose of this motion is directly related to such instances as that of Country Place, where under the current system, it took something like fifteen months to get to the point where the licence has been revoked and at the end of this month there will be a hearing in front of the review board.

It seems to me that there are two different kinds of violations of the Nursing Home Act. There are violations that are minor. The example, I think, that was given by the minister was when a fire door might be kept open in warm weather and that is technically a violation of the act, but it is obviously not such a major violation as to cause a revocation of a licence.

On the other hand, when you have violations of the act that clearly put at risk the health, welfare or safety of a resident, it seems to me the ministry has an obligation to move in and revoke or refuse to renew that nursing home licence.

This is an attempt to try to separate out the two different types of violations and to clearly indicate that the ministry has that power, that authority, and that responsibility. It doesn't in any way take the opportunity to appeal for the licensee away. There's still due process. But it says that the director has to act, and it means that the director has to act when that determination

is made, not fifteen months after, and in the meantime leaving the residents at risk for that period of time.

I think myself, Mr. Chairman, that this, that this is an extremely important amendment and would be a message to nursing home owners and to residents that the ministry intends to put behind its rhetoric a real legislative ability to have a crackdown on nursing homes that consistently violate the act and put at risk residents's health, welfare or safety.

The Chairman: Given the knowledge of your recent amendment on administrators, do you wish the words "the administrator or" to remain?

Mr. Cooke: If in fact the ministry or other members of the committee feel that the amendment is worthy of support with those reductions, those eliminations of the "administrator and management corporation," I'm more than prepared to do that.

The Chairman: Discussion, Miss Hart.

Ms. Hart: The difficulty we have with Mr. Cooke's amendment is that the director's discretion is taken away entirely, and I could put to you a number of different examples where the health, safety and welfare of the residents is being compromised, but it doesn't go far enough, in most people's judgment, that it would warrant the immediate revocation of a licence.

For example, the one that we heard from groups about the fire door being left open in the summertime. Now, that clearly does prejudice the residents' safety if there is a fire, but is that going far enough to warrant the immediate revocation of a licence? And in our view, it isn't.

And that's why our section was worded to leave that discretion in. We have in other parts of the act tried to tighten up the time periods in the revocation process so that if there are substantial grounds that warrant revocation, then the process moves along more quickly. But in our view, this mandatory revocation in these circumstances goes too far.

The other difficulties we have with this section I think have been elaborated upon in just past discussion where we were talking about the administrator and also all of those with controlling interest, the management corporation, et cetera. It is our view that that, what Mr. Cooke is proposing, is already taken into account in the, in the proposed amendments and this muddies the waters, and at worst, can take away the ultimate responsibility of the licensee, and so we will not be supporting this amendment.

Mr. Cooke: Could I just ask a question?

The Chairman: Yes.

Mr. Cooke: If in fact there was the removal of the administrator and the management company and an additional section that said that the health, welfare and safety violations be defined in the regulations, however that would be appropriately worded, would that not then take care of your concerns about lack of flexibility but would also clearly give the minister the power to appropriately use this when necessary?

Ms. Hart: Can you give me a minute?

The Chairman: Other members wishing to speak?
Yes, Mr. Jackson.

Mr. Jackson: Could the ministry, please, or someone with a legal mind please tell me what forge reasonable grounds for belief actually means?

The Chairman: Mr. Johnson, do you want to try that? Miss Baldwin does not.

Mr. Johnson: I guess reasonable grounds, you just have to take the ordinary meaning of it. There has to be something upon which a normal, reasonable person would conclude that there was this particular problem. It's hard to define it any more than that, but it has to be, as I say, something that an average, reasonable person would perceive.

Mr. Jackson: What constitutes a belief? Is it sufficient that the director thinks it is so?

Mr. Johnson: But it has to have a reasonable basis, and it may be that he has received two inspection reports indicating this, that and the next thing are wrong in the home, and he has confidence in the particular inspectors. On the basis of that, he forms a belief.

On the other hand, if he had, say if he acted on complaints and failed to investigate the complaints, you might say that wasn't reasonable, that he should have sent a professional in to look.

Mr. Jackson: Thank you.

The Chairman: Mr. Andrewes?

Mr. Andrewes: I think the difficulty I have with this amendment is that nowhere, as I can determine in the act, I know that I'll be told it's in the regulations, to spell out what the standard is in terms of forming an

opinion based on reasonable grounds for belief that the home is being operated, will be operated in a manner that is prejudicial to the health, safety, and welfare of the residents.

And it comes back to the age old problem that the standard is not clearly defined.

The Chairman: Do you have a response? Mr. Johnson?

Mr. Johnson: I would agree, sir, that there's obviously a grey area in this kind of situation. I'm reminded of the Country Place Nursing Home for example. The director certainly believed it was across that line.

There's clearly a gray area and we may say, well, is it reasonable or not? I'm not sure. But you can't avoid that. But across that line, I mean, there are many, many things the average person would agree upon. If you walk through the home and you find dirt in the kitchen. If you have human filth on the carpets, something like that, that is clearly more than reasonable grounds for belief.

But there will always be that grey area, and in those cases it will probably be before the Nursing Homes Review Board where that panel will have to make a final decision.

Mr. Andrewes: Where are we at now with this amendment?

The Chairman: Well, we're waiting for response of Miss Hart on the request by Mr. Cooke about changes he would make, would this --

Mr. Cooke: Satisfy your concerns?

The Chairman: Is there reasonable grounds for belief that this is an acceptable amendment or not?

Ms. Hart: Before I give that, I'm sorry, I was not able to hear all of what Mr. Andrewes was saying because I was distracted. Did you say that you were in support or not in support of this amendment?

Mr. Andrewes: I didn't say either one.

The Chairman: He said he had problems.

Mr. Andrewes: I have a difficulty with it because there is no standard in the act by which one can make the determinations of reasonable grounds and so on.

The Chairman: Would you like to respond to Mr.

Cooke?

Ms. Hart: Yes. We have some difficulty with the proposal to put, to set out what is prejudicial to the health, safety and welfare of the residents in the regulations, because you can never completely do that.

It would be preferenced that we, that we have your, that if we're going through the amendment, to say the director may revoke, and to take out administrator and then the verbage about the management corporation.

Mr. Cooke: What would, if that word was changed to "may," the current act says "a director may revoke or refuse to renew a nursing home licence where the nursing home is being operated in a manner that is prejudicial to the health, safety or welfare of the residents". That wouldn't really change anything from the current act, correct?

Ms. Hart: You're quite correct.

Mr. Cooke: So we either put "shall" and compromise on the rest, or we don't get anything.

The Chairman: I think we understand and I presume that if somebody wishes to go along with it, with the affirmative verb "shall revoke" rather than the potential verb "may revoke" and with the other changes, that the motion will be put forward without the other changes. If I don't hear that, then we might as well take the vote on this matter.

Mr. Andrewes: Just let me be clear here. What are you doing?

The Chairman: What's happening is I'm going to basically call the vote on the amendment as it's just been read and has not amended, although there's been a great deal of discussion about potential amendments. And I presume if we were to hear an amendment to take out the words "administrator," the vague "management corporation" and other words like that, and leave the word "shall" in, that would be appropriate to the mover, he would accept that.

But if I don't hear any suggestion of a motion of that sort, I presume it's not the will of the committee to go that way and we may as well take the vote unless I have another amendment to be offered.

Mr. Andrewes: So in effect what Mr. Cooke is proposing is you remove the offensive sections and leave in "the director shall revoke," rather than leaving it discretionary on the part of the director?

The Chairman: That's what he was suggesting, yes.

Mr. Callahan: Mr. Andrewes is planning on going against this and just won't say anything, but I think the "shall" is very critical to the whole thing, in terms of, particularly when you're talking about "affords," particularly when you're using the words "affords reasonable grounds for belief".

I mean, there have been instances of that terminology being used in the laying of a criminal charge against people, and the people have been found, or the grounds have been found to be unreasonable. So what you're doing here is if you leave the "shall" and the director cancels the licence, they're out of business.

I can see what Mr. Cooke is after. He's trying to find the most offensive situation, that it would be dealt with in a very quick fashion, but I think that Mr. Andrewes has to have difficulties with the criteria. I can't see that he wouldn't.

Mr. Cooke: The difference, Mr. Callahan, is that there is obviously still judgment left for the director. Even if the word "shall" is used, someone has to determine whether there's reasonable grounds. The director makes that determination, so whether the word is "shall" or whether the word is "may," there's still a judgment call on the part of the ministry.

What all of this says is that if the director has reasonable grounds to come to the determination that a resident's health, welfare and safety is in jeopardy, the step of revocation of the licence has to be taken. To me, if you're talking about protecting residents, and if you can't pass that, there's still judgment allowed in there because the director gets to determine whether reasonable grounds exist or not. If you can't support that, then I'm not sure that we can be terribly serious about protecting nursing home residents.

Mr. Callahan: No. But he's relying, as stated by the staff, he could be relying on an inspector's information. You know, I would expect that that information would be accurate, but let's face it, when a justice of a peace or an informant swears information on the basis of another police officer's investigation, it may turn out to be totally unfounded. And I think what you've done there is you've allowed the director to act on that information and perhaps acted inappropriately. I think discretion is very important.

The Chairman: Then no amendments to the proposal

by Mr. Cooke, I think perhaps we should move to the vote.

Mr. Cooke: If you're willing to accept the "shall," I'm willing to take out the "administrator" and "management company," but the major change that I'm suggesting is that the word should be "shall". Everything else, I --

The Chairman: So Mr. Cooke's motion amending Section 5, clause 5(f) carries? All those in favour? Down. Those opposed? Defeated.

And we adjourn until 2 o'clock.

(The committee adjourned at 12:10 p.m.)

AMMAN
X 10.10
- 578

S-80

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

WEDNESDAY, MARCH 4, 1987

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Pollock, J. (Hastings-Peterborough PC) for Mr. Baetz

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)

Campbell, M., Counsel, Legal Services Branch

Johnson, J. M., Director, Legal Services Branch

Sapsford, R. T., Director, Nursing Homes Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
 . STANDING COMMITTEE ON SOCIAL DEVELOPMENT.
Wednesday, March 4, 1987

The committee met at 14:12 in Room 228.

The Chairman: I call the committee to order. I wouldn't want to get too excited about the progress we've made, but we've done very well today. I hope you had lunch as well and the time has not left you disgruntled, but helps you get down to work again.

We were on Section 5, subsection F. An amendment by Mr. Cooke has just been defeated, but I did not ask as to whether or not subsection F would carry. Now subsection F carries. I am basically asking if that which presides in the bill, which is an amendment to which it was proposed and was defeated should carry, so that which is the written... the conduct of the licensee or, et cetera, et cetera, subsection F.

So I carry. All those in favour?

Carried.

G. I don't think there is an amendment. I have no amendments for G, H, I, J, K of 5. Are there any other comments that anybody would like to make about any of these particular subsections? If not, shall those subsections carry?

Carried.

Section 5 was not amended at all.
 Section 5 carried.

Section 6. We do have amendments. We don't have an amendment to 2. Okay, so Section 6 arises in Section 7 of the Act for 2(a), on the bottom of page 8 of the Bill. I have no amendments at this point. Are there any discussions of that provision? I see none. Shall Section 2(a) carry?

Carried.

On Section 4(a), I have several amendments and therefore we'll start with the government motion, if I might. Who would like to take this one, sort of alternating them?

MS. HART: Mr. Reyecraft, would you help?

Mr. Reyecraft: Which one?

The Chairman: Section 6, subsection 7(4a) of the Act.

Mr. Reycraft: I'll try the page with the larger print this time.

The Chairman: Move very slowly.

Mr. Reycraft: Mr. Chairman, I move that subsection 7(4a) of the Act as set out in section 6 of the Bill be struck out and the following substituted therefore.

(4a), where the board is required to hold a hearing, it shall proceed forthwith to hold a hearing unless the licensee satisfies the board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the license; that it would be just and reasonable to give the licensee that opportunity, and that delaying the hearing will not adversely affect the health, safety or welfare of the residents.

The Chairman: Thank you, Mr. Reycraft. That is in order.

Would you like to speak to it, Parliamentary Assistant?

Ms. Hart: Mr. Chairman, the intention in drafting this amendment was to tighten up the old sections so that there weren't opportunity upon opportunity to comply. We didn't want to take out all discretion, but we thought the fairest way of doing that was to reverse the onus, in effect, so that the licensee would have to demonstrate that it was just and reasonable and that it would not adversely affect the health, safety and welfare of the residents.

We used the word 'forthwith'. It is a legally recognized term which means promptly and it also may mean a shorter time than was proposed, I believe, in one of the NDP amendments which was 24 hours. I'm not sure if it was this one.

The Chairman: It was another section, I guess.

MS. HART: Very well.

The Chairman: Further discussion.

Mr. Cooke.

Mr. Cooke: I would just like to get a better understanding of what may be a practical application. If somebody can explain if this section had been in the Act with the Countryplace Nursing Home, what would the practical application of this section be?

The Chairman: Mr. Reid or, I'm sorry, Mr. Campbell.

Mr. Campbell: Under the present statute, the licensee must be given a reasonable opportunity to comply with whatever requirements there are for the retention of the license. Where the requirements for the retention of the license relate to, say, physical plant or structural defects of one sort or another, then it is reasonable and sensible to give the licensee time to construct and so on and so forth.

But where the defects relate to what might be called operational deficiencies which can be remedied and should be remedied in a very short order, the present statute allows or gives an opening to a licensee to delay unduly.

The present amendment which the government is proposing puts, as the Parliamentary Assistant said, the onus on the licensee to, in effect, show that in all the circumstances of the case, and consistent with the needs of the residents and so on, an opportunity should be given.

At the present time in the ministry's practice, unless there is an immediate and very severe problem affecting the residents, such that the Health Facilities Special Orders Act must be invoked, the ministry's practice is to allow licensees informally before revocation proceedings are begun some time to comply. So in effect there are two delay points. One, before where revocation order is sent; and then two, before the board hears the matter.

What we are doing in section (4a) is reducing then eliminating that second delay point.

Mr. Cooke: So as I understand it, the annual inspection at Countryplace took place in October of '85 and there was a determination at that point that the nursing home was in pretty bad shape. And under the current law, it was then quite some time before the ministry, they gave the opportunity to comply to the nursing home. They didn't comply and there was another inspection in 1986, and then eventually action was taken.

Under this, if in fact a delay or an opportunity to comply with the Act would adversely affect the health, safety or welfare of the residents under this, the ministry could have acted in October of 1985.

Mr. Campbell: No, that's not it. If I understand you correctly, once the ministry determines that it's necessary to have revocation proceedings, once the ministry makes that determination and files its letter proposing to revoke and receives a Notice of Hearing from the licensee, then under Section (4a) the board is to proceed forthwith.

There is no longer a second delay component built in.

The only delay component which is now present in practice would be the ministry's delay, if you want to call it that, or time to get its facts and law together and so on to proceed.

Mr. Cooke: So let me take another chance at it. In October of '85 then, if the ministry determined that the problems were serious enough to consider revocation of the license and could have sent the letter, then this section would have kicked in and the nursing home -- the onus would then have been on the nursing home to demonstrate why they should have the opportunity or the time to comply?

Mr. Campbell: That's correct. What happened in the Countryplace situation was we filed a letter of revocation. The board ruled that the operator should be given a three-month period to comply.

Mr. Cooke: And that was when?

Mr. Campbell: You'll have to forgive me. I don't know precisely.

Mr. Cooke: That was this last year?

Mr. Campbell: Yes.

Mr. Cooke: So the delay could still continue if the ministry didn't change its practice of waiting from October of '85 until August of '86?

Mr. Johnson: This speaks to delay after a Notice of Revocation has been filed.

Mr. Cooke: The original delay then still remains completely a policy question?

Mr. Campbell: That is not addressed by this section.

Mr. Andrewes: I want to clarify that last point.

The Chairman: So in the Countryplace example, it wasn't until the letter was sent in September or until the board determined --

Mr. Johnson: It was filed in August of '86, the Notice of Revocation. The board, sometime in late September, met and set this time to comply, which in fact terminated February 3rd. It's that four month period that is affected by this section.

Mr. Andrewes: What kind of argument would a licensee have to make to cause a delay in the hearing?

Mr. Johnson: I suspect to really make this work, a

licensee would probably have to show, first of all, that they hadn't had enough time to comply and that a little more time would enable them to comply, and therefore it's just to give them more time. But they would have to show that the residents would not be adversely affected, and I suspect that in most cases they would have to show that they were doing something immediately to address the prejudice to health, safety and welfare or they probably wouldn't get the delay.

Mr. Cooke: Is it safe to say that if the ministry waited in a similar circumstance to Countryplace, if it waited from October of '85 to August of '86 before they wrote a letter of revocation and then they tried to use this section, it would be pretty difficult to argue that the further delay would put the residents' health, welfare or safety in jeopardy since the ministry was willing to do that for almost a year before that?

Mr. Campbell: It would likely be very difficult for a licensee to argue. The answer would be we've had since October of '85 or whatever.

Mr. Cooke: No, I think you're coming at it from the other way. You are not giving them that much time. How could you possibly then argue that they shouldn't be given more time?

Mr. Johnson: On the part of the ministry, we would have to be able to show that the problem was continuing and perhaps showed signs of worsening or there would be some danger of condonation if you go on and on with the same state of affairs and then suddenly decide to revoke. But presumably the ministry would show that there had been time to comply given for valid reason and now there has been enough time.

Mr. Andrewes: The board would make that judgement?

Mr. Johnson: Yes. Probably at a preliminary stage which should occur very quickly after the filing of the notice. Probably what would happen would be that the licensee presumably would make a motion at the same time as he indicated he wanted to challenge the action of the ministry; would probably make a motion seeking time and then he would have to satisfy these provisions in this section.

Ms. Hart: Under those terms.

Mr. Johnson: Yes, conceivably. I mean, the board would have the power, for example, to say "Well, okay, here is two months more to comply provided that you immediately clean up the human filth in the living room, et cetera, et cetera." In other words, lay conditions. And presumably failure to satisfy those conditions forthwith would allow

the ministry to come right back to the board.

Mr. Andrewes: I feel more confident, Mr. Johnson, if you weren't using terms of like 'probably' and 'presumably'.

Mr. Johnson: You don't get a degree in law without it.

The Chairman: I think that, just for clarification's sake, it's important to know at what stage you're doing that, but if people want to deal with other parts of delay, clearly this is not the place to do it.

Mr. Cooke: It's an earlier motion, I think. Are we debating this section now?

The Chairman: Yes, you are.

Mr. Cooke: There is nothing wrong with this section, obviously, and it speeds up the process somewhat. I am concerned that when this act is given final approval, that we still will not have dealt with the major part of the delay as clearly indicated took place with the Countryplace matter.

Much of that is a matter of policy for the government to deal with since we don't have an amendment as we had proposed that would force the director to act immediately if there was a determination that the health, welfare or safety of a resident was in jeopardy. I guess from our debate that we had on Countryplace both with the Parliamentary Assistant and with the minister, I am not convinced that the policy of this ministry has changed in terms of acting more quickly and giving nursing homes the opportunity to comply.

In fact, the word that constantly kept coming back to us was 'cooperation', and it seems to me that if a resident's health or safety or welfare is put in jeopardy, there is no need and there is no right to cooperation. There is a need to act in order to protect the residents. However, this is an improvement, and I hope that since we have rejected the other proposal that was put forward by my party, I hope that we will see a change in policy at the very least that will take that first ten months that was given to Countryplace and never allow that to occur again, where residents are in serious jeopardy.

The Chairman: Further comments on this section?

Mr. Jackson?

Mr. Jackson: Just a brief question. Just so I understand the process, when the board serves notice of the hearing, in all likelihood the licensee has perhaps not completed all of his investigations of whether or not the

charges are valid or warranted or whatever or the costs of remedy and so on. I mean, is it possible that that can occur, that we are calling the board hearing before that process of the licensee is completed?

Mr. Johnson: Before the licensee's process? Normally the hearing would be triggered by the ministry moving to revoke, for example.

Mr. Jackson: Right.

Mr. Johnson: The licensee then has the opportunity to contest that by telling the board "I want a hearing." It's conceivable at that point the licensee may ask for more time to get ready for the hearing? Is that your question?

Mr. Jackson: Yes.

Mr. Johnson: That's certainly possible, yes. And the board would then have to weigh the so-called due process question of obliging a licensee to go ahead with a hearing before it was ready. I mean, the licensee, because there is some period of time to get ready for a hearing.

Mr. Jackson: Okay. It's a little clearer now.

The Chairman: Further questions? If not, we will take a vote. Shall Mr. Reycraft's amendment, Section 6 subsection 7(4a) of the Act, carry? All those in favour? Carried.

Section 6. Your amendment to 6, because it alludes to something which is defeated is withdrawn.

And then we would move to a government motion, to Section 6 subsection 7(7). It was Mr. Cooke's amendment to the same section we just carried because it referred back to a motion which was defeated.

And now, Mr. Reycraft, do you have the page? It's government amendment to Section 6 subsection 7(7).

Mr. Reycraft: Mr. Chairman, I move that Section 6 of the Bill be amended by adding thereto the following as subsection 7 sub (7) of the Act: This section does not apply to applicants seeking the issue or the undertaking for the issuing of a licence where, in the director's opinion, another applicant better meets the director's conditions for the issue of the licence.

Ms. Hart: Might I speak to that, Mr. Chairman.

The Chairman: Fine.

Ms. Hart: What this subsection is intended to remedy

is the problem where the minister or the ministry seeks proposals for nursing home beds, for example; and there are a number of beds or proposals and the minister must choose one of those proposals.

It was not the intention in drafting the section that the losing tenderer or maker of the proposal should then have a second kick at the can, and that's why this subsection is put forward. It's really just to protect the tendering process, the proposal process because it has its own equity built in it to give every losing tenderer a second time to come back at it. It seems to have it.

The Chairman: Mr. Jackson.

Mr. Jackson: I am confused about the tendering process. Can somebody elaborate on that? What am I missing with respect to a second chance? Is it put on to allow the retender?

The Chairman: No, I think what's being said here is that if you have a home being offered in one area and then a couple of people apply and the government chooses one, that the process of review the board application does not apply to the person who was not chosen for the home in terms of that open competition or whatever, but to operators, for all the other reasons that we had but not financial application.

Mr. Sapsford: That's correct.

The Chairman: Further questions on the new subsection 7(7)?

Mr. Jackson: Yes. I am still confused and I'm sorry. I am concerned about the public tendering processes. And I am not clear in my mind, does this mean that the government in any way can award a tender to someone who didn't apply?

Ms. Hart: No.

Mr. Jackson: Well, this section does not apply in applicants --

The Chairman: Mr. Sapsford.

Mr. Sapsford: The section is dealing with the nursing home review board and appeal to that particular body. It deals with cases where the director proposes to revoke or refuse to renew it. So in a few of the cases where there is an existing licence that someone holds, the other section, the other processes where the government decides to create new nursing home beds or a new licence - and in that process there is a request for proposal where we may get 15 or 20 applications for that license - then the minister makes the decision and awards the license.

What this clause seeks to do is remove the ability of one of the unsuccessful applicants from going to the review board under the assumption that there has been a refusal to issue a licence to that specific person, so it's two separate processes. And what we are trying to do is clarify who has access to the nursing home review board and that's to be confined to those who hold existing licences.

The Chairman: Thank you.

Mr. Jackson: And then If I can just ask the obvious questions, what's the net effect of denying them access to the review?

Mr. Sapsford: Well, because the determination as to who should be awarded the licence goes through a formal review process and awarded by the minister in those cases. The purpose of the review board has always been to consider questions where the ministry has attempted to remove a licence.

Mr. Andrewes: Has it ever happened in a tendering process where the unsuccessful tender asked to be considered by the review board?

Mr. Sapsford: Yes.

Mr. Johnson: Frequently or infrequently?

Mr. Sapsford: We had one case.

Ms. Hart: It also increases the delay. If the community is in need of 50 nursing home beds and the award to the successful bidder has to be held up pending this additional appeal process, then the community goes without these beds whatever length of time it takes to go through the process.

Mr. Jackson: But it also has application given the controversy of profit and not-for-profit, that one might be selected and one might not and therefore one would be denied. I mean, the not-for-profit, if it didn't get the successful applicant, then they would be denied the opportunity to --

The Chairman: If a previous motion carried, that might have been the issue, but since it didn't then you are not holding them accountable to the policy. I don't see how it's relevant at this stage.

Mr. Jackson: Thank you, Mr. Chairman.

The Chairman: Further matters on Mr. Reycraft's motion? If not, all those in favour please indicate.

Carried.

I have Section 6 as amended carried. So Section 6 as amended carried.

Carried.

And we now would have Mr. Cooke's motion which would be for a new Section 6(a) which I would like stood down since it deals directly with the section that we stood down on public meetings. It flows from that earlier amendment that we have stood down. Put it on the record and then we can stand it down.

Mr. Cooke: That the Bill be amended by adding thereto the following sections:

6(a) The said act is amended by adding thereto the following section. Where, after receiving submissions, the director proposes to grant a request concerning the matter described in Section 4(h), the director shall cause notice for the proposal, together with written reasons therefor, to be published in a newspaper having general circulation in the area where the nursing home is located or intended to be located.

Two, a notice under subsection 1 shall state that: Any person who made submissions to the director under Section 4(h) is entitled to request a hearing by the board if the person mails or delivers within 15 days, after the notice is published, written notice in writing requesting a hearing to the director of the board. And the applicant or the licensee and the person may so request such a hearing.

Three, where the board receives a notice under subsection 2, it shall hold a hearing unless it is of the opinion that the request is not made in good faith or is frivolous or vexatious.

Four, Sections 7 and 8 apply with necessary modifications to a hearing held under this section.

The Chairman: Mr. Cooke, there will be necessary little changes in that no matter whether any amendments come forth. It's agreed that that will be stood down until we deal with the other matters to which it refers? Agreed? Thank you.

I then have nothing further. I just hope we get to Section 7 where we are now, and I have two amendments here, Mr. Cooke's and the government's. They deal with a similar matter. The government is focusing on one particular subsection of 7(1) where Mr. Cooke replaces it. I think I should probably take the government amendment first, and then if you wish to add an extra amendment to that, that might be a good way to go.

Mr. Reycraft.

Mr. Reycraft: Mr. Chairman, I move that clause 8(1c) of the Act as set out in subsection 7(1) of the Bill be struck out and the following substituted therefor: C, any resident or group of residents who request party status.

The Chairman: Thank you.

Ms. Hart: Thank you, Mr. Chairman. We propose this amendment in response to the submissions of some of the groups that felt that it was not enough to have the agent and the residents' council be a party before the board and so we added "any resident or group of residents", given that some groups would not have corporate status and might have some difficulty being parties otherwise.

We added at their request, for the reasons that we mentioned yesterday, mostly because if a resident or group of residents are not interested, if you don't make it at their request and you include them as parties as of right, then you have a sometimes unbearable paper flow for the parties who are involved in the procedure before the board, and it was merely for administrative ease for those appearing.

The Chairman: Thank you.

Mr. Cooke.

Mr. Cooke: If I could, perhaps, just move an amendment to the amendment, since I don't have one written out, but it's quite easy. What I want added is the employee, and I would suggest based on the presentation that was made yesterday by the coalition that the appropriate wording for an employee should be "any employee or group of employees who request party status".

The wording is exactly the same as residents except where substituting employees. That gets away from the problem of: they requested and therefore there doesn't have to be this ongoing service.

Mr. Reycraft: Point of order, Mr. Chairman. Should that be considered an amendment to this amendment?

The Chairman: I think the easiest way to deal with it, unless we are going to deal with that as legal counsel is just suggesting to me, as a C(a) rather than a C, then I would suggest we go back to that just because it's different than our resident. And it might be better to take the government motion and move yours as a new sub D or whatever order or maintaining the present C for the residents' council, then make it an E. So why don't we take the

resident's issue first and then move on to the employee question secondarily. Is there anything further, if that's all right?

Mr. Cooke: No, that's fine.

The Chairman: Anything further on the government amendment for a new subsection C? No discussion?

Mr. Jackson.

Mr. Jackson: Just a quick question. What protection is there within the Bill or the rights for frivolous complaints? There are several processes in the province that aren't totally open ended or else a Parliamentary Assistant talks to the end as a paper flow or there are other complications as well.

The Chairman: The only section I know at the moment that uses that expression is the one in terms of the requirement to report abuse. Now I was going to get to that. That's the only one that I am aware of in the Act at the moment.

Mr. Jackson: But that has to do with malicious and damaging statements and accusations. 'Frivolous' is a whole other area.

The Chairman: And in the motion that was just stood down, Mr. Cooke had a section on things that were frivolous and vexatious as well.

Mr. Jackson: I am just suggesting that --

The Chairman: If your concern is that there not be people making, I don't know, vexatious interactions around those people who could be party to a board, then I think that would be in another section. It wouldn't be appropriate to deal with it under the definition of who could be party. You would want it to be subsequent to that.

Mr. Jackson: I just wanted to know what we were getting into in that respect, so I have a better handle on that. Thank you.

The Chairman: Would you like to respond in terms of if you think that's a difficulty in terms of parties, if they seem to be a party to --

Ms. Hart: I am not sure I totally have a handle on the question. But if the question is do we address a substantive nature of -- to put it a better way: Do we address the kind of reasons why someone would want to be a party in this section. The answer is pretty clearly no. Can counsel help me out on other sections?

Mr. Campbell: I think if you put the question again.

Mr. Jackson: I got the answer I was looking for, Mr. Chairman.

The Chairman: I think at the moment, essentially what he wanted to know was whether or not there was any protection within here for selection of parties who would be eligible in terms of somebody who might be doing it for malicious or malevolent reasons and the answer is no, that under this section of who may be a party, there is no attempt to deal with that.

Mr. Jackson: But in the Bill we have an amendment that we have yet to deal with which in some way may deal with that.

The Chairman: Yes, I think there are two that in one way or another deal with that.

Mr. Jackson: 17(a) which I was aware of, but it reminded me of Mr. Cooke's.

Mr. Cooke: It is a different issue, Mr. Chairman.

Mr. Jackson: But before we start broadening the basis of everybody can come to the process, I would like to know --

The Chairman: I think again if we could keep the matter separate, what you're dealing with here is who do you want to be parties to the process. That's what's important. Who do you think should have the right to standing if they request it, as that's defined at the moment; and then subsequent to that, you may wish to see what kind of controls you place on that in terms of how you behave before the board.

And boards have a fair amount of power often in that area, but in terms of a municipal board, they have a right to decide when they think it's being frivolous.

Sticking just, if we could, to the definition of who is going to be there, is there anymore discussion about the amendment which would make any resident or group of residents who request party status be parties? Okay, if not, all those in favour, please indicate? Those opposed? Motion is carried.

Mr. Cooke, now would be the time to move the amendment you're talking about.

Mr. Cooke: I move that subsection 8(1) of the Act as set out in subsection 7(1) of the Bill be amended by

striking out "and" at the end of clause C and adding the following clause: C(a) Any employee or group of employees who request party status.

The Chairman: All right, the motion is understood.

Mr. Cooke, do you want to speak to that again?

Mr. Cooke: Obviously, when there is going to be a hearing, the employees have an interest in the process. The wording is obviously similar to that or exactly the same as for residents so that there must be a request, but I don't think there should be any discretion. I think if they make the request, they should be accepted as parties since they have a direct interest in the process.

The Chairman: Any discussion about....

Mr. Andrewes.

Mr. Andrewes: Can I just ask about the hearings themselves? Are they formal, do they allow cross-examination?

Mr. Campbell: Yes.

Mr. Andrewes: Witnesses for?

Mr. Campbell: Yes.

Mr. Andrewes: Is it testimony taken verbatim and transcribed or --

Mr. Campbell: Yes, it is. It is tape recorded.

Mr. Andrewes: Thank you.

The Chairman: Anything further on the amendment? If not, all those in favour, please indicate. Down. Carried.

I understand this is C(a). The numbering will be changed later on. The residents' council will ask us for the right to edit everything and change it in her own words and we will all agree. We will all just agree. No, she doesn't even ask, she tells me. We all just accede to her rights.

Mr. Jackson.

Mr. Jackson: Mr. Chairman, just a legal question. In any way, now that we have replaced (c) from the Act, which I understand that we have done, and replaced it with the amended (c), in any way if a resident's group cannot be represented by themselves, that they can send an agent?

Ms. Hart: That is with respect to the Policy Procedure Act that enables counsel by counsel --

Mr. Jackson: Okay, thank you.

The Chairman: I have no other amendments to section 7(1a) through D. Are there no further amendments? If not, shall Section 1 sub 1(a) through (d) carry as amended? Carried.

All right. I have no further amendments on Section 7 presented. Is there any discussion on sub 2, sub 3 or sub 4 of Section 7? I see none. Shall Section 7 carry as amended? Agreed.

Section 8. There are no amendments, just a repeal of section 11 of the Act. Agreed.

Section 9, no amendments, which is just a wording change in terms of the revocation. Agreed? Carried.

And now under sub 10, we have amendments. There is one for Mr. Cooke. Do we have any others? Mr. Andrewes. I have one for 10(1). Is yours for 10(1), Mr. Andrewes? I have an NDP one for 10(1).

Mr. Jackson: Mine is for 10(2).

The Chairman: Okay, well, let's take 10(1) first.

Mr. Cooke, would you like to move your amendment.

Mr. Cooke: I move that subsection 10(1) of the bill be struck out and the following substituted therefor: (1), subsection 13(2) of the said act is repealed and the following substituted therefor:

Where, in the opinion of the Director, special circumstances warrant reducing or increasing the facilities, services for residents or bed capacity required in an extended care unit under subsection (1), the Director may, by order, authorize the reducing or increasing of the said facilities, services for residents or bed capacity to such amount, for such times and under such conditions as are specified in the order.

All this basically does is make it clear that any expansion of services under this section are for residents. I can envision that these types of things under this section, there are two times where the words 'for residents' are used. This is only under the special circumstances of a short-term condition where I guess I can envision if there was a fire at one nursing home and he required to expand the services of another nursing home to accommodate the residents, then you would be able to accommodate the

residents of another nursing home by using this section. Not to be confused with another section where other services may be provided in the community. This I think was the amendment that we are proposing was the original intent of this bill.

The Chairman: Thank you, Mr. Cooke.

Mr. Cooke: I believe this one, Parliamentary Assistant, was the original intent as opposed to the 10(3).

The Chairman: Mr. Andrewes.

Mr. Andrewes: It is clear there is a special circumstances section. The other is something over and above.

Mr. Cooke: An extra service.

The Chairman: Parliamentary Assistant, Ms. Heart.

Mr. Andrewes: No problem.

The Chairman: All right, further discussion. All those in favour of Mr. Cooke's amendment to 10 sub 1 please indicate? Carried. Thank you.

Now we have an amendment to 10 sub 2. Mr. Andrewes.

Mr. Andrewes: I move that section 13 of the Act is amended by subsection 10(2) of the Bill, be further amended by adding thereto the following subsection 3(a):

Before entering into an agreement with a licensee under subsection 3, the minister shall give every other licensee servicing a substantial portion of the same area an opportunity to submit a proposal for the provision of the services that would be the subject matter of the agreement. So this would actually follow under sub 3, would it?

The Chairman: This would now become 3(a) as I see it. Since there was no amendment to 3, I think that's fine. Let's just deal with it now. Would you like to speak to it?

Mr. Andrewes: Briefly, Mr. Chairman, I think we have had some discussion up to this point in time on various occasions about the concerns we have about the arbitrariness of that section, Section 3. This in fact allows for a more fair allocation of these extra services and gives other facilities in the area, and therefore other residents, equal access to these services or a better access to these services rather than having them just decided upon arbitrarily by the minister or the ministry.

The Chairman: Ms. Heart.

Ms. Hart: Our concern with this proposed amendment is that it precludes the minister from awarding a pilot project for -- we have referred before to the Alzheimer's unit that Mr. Stevens was talking about in his submission.

It is not the intention of the ministry to go out looking for beds to put Alzheimer's residents in, and our concern is that if the amendment passes as it is that that is what will happen. Let's take Mr. Stevens as an example. He already has an Alzheimer's unit where he has the residents in place, and the hope is that that unit will be funded on a pilot project, targeted project kind of basis.

If we open it up and say, well, everybody in the area will have the same opportunity to do what Mr. Stevens proposes to do, whether or not they already have Alzheimer's residents in their homes, they may go out and find some and most certainly there are people with Alzheimer's around. But it takes away that flexibility that we feel is needed in this kind of special project, pilot project funding.

The intention is not to be discriminatory other than some homes will take on these kinds of projects, some won't for various reasons. It might be reasons of physical plant, but we will not be supporting the amendment because it takes away that flexibility.

Mr. Andrewes: I guess my response to that, Mr. Chairman, is that surely the ministry would want to have the best proposal if it was seeking, in the case of a proposal for Alzheimer's, patients in an area with what we would want to have the best proposal that is available. And hopefully in order to sort of use it as a pilot project or a demonstration of technique and of a type of care facility and so on, that it would seem that the best way to get the best proposal would be to call for various proposals from other competitive organizations in the area.

I am not sure I want to use the term 'competitive', but certainly other organizations that may or may not be in a position to provide that service, let them make their proposals and select the best one.

The Chairman: Mr. Cooke.

Mr. Cooke: Well, Mr. Chairman, I think both the government amendment in the Bill and Mr. Andrewes' amendment, and then taken in context with the amendment that I will be presenting eventually, show very much the confusion that currently exists in the field as to profit versus nonprofit and whether it's competitive or whether it's how services are exactly to be delivered in our communities.

On the one hand, you have the ministry saying that there can be an agreement for extra services. The impression is that we are talking about extra services for residents of nursing homes, but clearly what we are really talking about is services for residents in nursing homes and services for people in the community and that the nursing homes could ultimately be used as a for-profit system to deliver community based care.

Mr. Andrewes is simply presenting an amendment that I think puts the issue up front rather than the way that it's been presented by the government. If in fact you buy the argument that the for-profit sector should be able to do this, I think that it's appropriate that Mr. Andrewes' amendment should carry. If you don't buy the argument that the for-profit sector should be doing this, as I don't, then the amendment should be defeated and the section should be amended to make it clear that the only services that we are talking about are services to residents. I will be voting against Mr. Andrewes' amendment and I will be proposing my own amendment.

The Chairman: I apologize, Mr. Cooke. I probably should have placed yours first but didn't notice there was another one under the pile, but I don't think it precludes us from dealing with this one first. That's why I've allowed it to continue even since I've noticed my error.

Any further discussion on Mr. Andrewes' motion?

Mr. Jackson.

Mr. Jackson: Mr. Chairman, it's just a question of process. Why, if the NDP have a motion on this, why has it not been presented?

The Chairman: It was my fault. We just dealt with an NDP motion and I was looking to see which one came next remembering that Mr. Andrewes said he had one and didn't notice that Mr. Cooke's was in fact for -- I thought Mr. Andrewes was for sub 2 when it was actually for sub 3(a) whereas Mr. Cooke's would have been for the existing 3 and it should have been dealt with first.

I didn't notice it until we started the debate and then decided that in fact we can deal with the one and then deal with the other. It doesn't really matter which order because the matter is all still open and the issues are different although related.

But if you prefer to stand this one down and deal with Mr. Cooke's --

Mr. Andrewes: I prefer to stand this one down until we deal with Mr. Cooke's.

The Chairman: Agreed? All agreed.

Mr. Cooke, would you like to continue.

Mr. Cooke: I move that subsection 13(3) of the Act as set out in subsection 10(2) of the Bill be amended by inserting after 'services' in the second line 'for residents'. I am not sure that the amendment needs any further explanation. It just simply clarifies what I had hoped was the original intent of this section, but which I now understand not to be the original intent of this section, and that is that extra services should be available to residents only.

The Chairman: Thank you, Mr. Cooke. Discussion.

Ms. Hart.

Ms. Hart: Mr. Chairman, our concern about this amendment is that -- well, there are several concerns, but the major concern is that in some communities the nursing homes are the centre of the communities and are the logical place for community out-reach for such services as Rest Fit Care. As I understand this amendment, it would preclude the operator of the nursing homes from offering such services as Rest Fit Care.

Mr. Cooke: You are quite correct. What it would do though is that -- one of my fears with your amendment obviously is that it's going to result in a substantial expansion and continued reliance on the for-profit sector. If in fact you need some kind of care in the community, instead of saying we can't provide it, the only way we can provide it is if it was an out-reach of the for-profit nursing homes, the alternative would be for the ministry to start encouraging nonprofit groups in small communities and in counties and other places to begin developing and so there is an alternative.

Ms. Hart: There is no intention of differentiating between profit and not-for-profit in --

Mr. Cooke: It's just a reality that when 96 per cent of the nursing home beds are for-profit --

Ms. Hart: Perhaps you would let me finish. It would equally preclude not-for-profit homes from offering the same service, and there is nothing that says that the service couldn't be offered by a community group on a nonprofit basis even if the home were for-profit, and we have some serious concerns about your amendments.

The Chairman: Mr. Davis.

Mr. Davis: Let me make some clarification for Mr. Cooke.. This is amended, for example, that if it was a nursing home be it private or nonprofit and there was no other facility, that his motion would preclude that home providing the meals for Meals-on-Wheels?

Mr. Cooke: They don't provide them now, and we have to deal with some Meals-on-Wheels programs across the province. In reality --

Mr. Davis: Some do, Mr. Cooke.

Mr. Cooke: The reality is that if you want those kinds of services provided, they can be provided, and if there is proper encouragement and funding through the Ministry of Health with nonprofit community based groups. To simply say the only alternative as nursing homes in a variety of communities in the provinces is to throw up your hands in despair and say we can't expand the community based system...

Mr. Davis: Mr. Cooke, some nursing homes already provide that kind of service. I can name it, if you want.

Mr. Cooke: The Meals-on-Wheels?

Mr. Davis: Yes.

Mr. Cooke: I know some homes for the aged.

Mr. Davis: Well, I'm not saying homes for the aged. But the other question I have, Mr. Chairman, is that I think that this becomes extremely restrictive, and I think that anybody who has been in a volunteer service sector of society knows how difficult it is to encourage people to become involved in volunteer operations. I think that we should provide the option to the nursing homes to meet needs that arise in a community that cannot be serviced in any other way.

The Chairman: Any further discussion?

Mr. Andrewes.

Mr. Andrewes: I agree with everything my colleague said.

The Chairman: Okay. Any further discussion? If not, we will take the vote on Mr. Cooke's motion. All those in favour of Mr. Cooke's amendment to 10(2) to add the words 'for residents' after the word 'services'. All those in favour? Down. Those opposed? Same old thing.

Now we go back to Mr. Andrewes' motion. Further discussion and debate on Mr. Andrewes' motion for a new sub

3(a).

Mr. Reycraft.

Mr. Reycraft: Mr. Chairman, the question is really a technical one, but the fourth line of Mr. Andrewes' motion refers to - third and fourth lines - refer to servicing a substantial portion of the same area. That doesn't sound like normal legislative language.

The Chairman: Some sort of aberration.

Mr. Reycraft: Well, I think there is a definition problem because I think I know what he means, but I would like to know if there is a more accurate way to describe it.

Mr. Andrewes: Mr. Chairman, those were not my words. They were the legislative counsel's words.

Mr. Reycraft: Oh, that explains it.

The Chairman: Let her explain it.

Ms. Baldwin: They were legislative counsel's words. They were not "my" words. I would ask either Mr. Reycraft or Mr. Andrewes or both -- I would ask Mr. Andrewes, is this what you asked for. I assume what this means, what I understand this to mean, is that the other licensee has to have residents from most of the area being served or something like that.

Perhaps if Mr. Andrewes can tell me what he means, we can see what's reflected.

Mr. Andrewes: I think the intent here was -- and 'area' may not be the correct terminology. Perhaps it should be 'region'. I don't know what in this Act, how the province is divided up, but my concern was that, say, in the Niagara region where there are probably 12, 15 nursing homes, perhaps more, that if a special program were to be offered or special programs were to be purchased and contracted for by the ministry, that within that particular area other service deliverers be given a chance to tap into that opportunity.

Ms. Baldwin: I might comment a little bit further. From my working with the Nursing Homes Act as drafter, I can say that there are a number of places in the Act where it refers to the area in which the nursing home is located. I would have to turn to counsel in the ministry for an explanation of what the area means in that context. But I might suggest from what Mr. Andrewes says that it might be possible to simplify this by simply saying that the minister shall give every other licensee in the area or in the same area an opportunity, and then it will at least be referring

to the area in the same sense as the rest of the Act refers to the area. That's as far as I can take it.

Ms. Hart: I have a question.

The Chairman: Let's just make sure that this is all right for the counsel. Is there any comment from the counsel on that suggestion before I --

Mr. Johnson: It's difficult to argue with the facts, sir, that the words are already used in the Act elsewhere well before this particular amendment was introduced in the House.

The Chairman: What's your feeling, Mr. Andrewes, about replacing this 'servicing a substantial portion' with just 'servicing' in the same area?

Mr. Andrewes: I have no difficulty with that.

The Chairman: Okay, why don't we do that. Is it understood by all members that we are now replacing the words 'servicing a substantial portion of the same' with in the same area -- 'in the same', rather?

Mr. Andrewes: In the area.

The Chairman: Do you want same?

Mr. Cooke: She also suggested same.

Mr. Andrewes: Did she?

The Chairman: All right.

Ms. Baldwin: How about every other licensee whose home is located in the same area? We don't want the licensee in the area, we want the home in the area, the nursing home.

Mr. Cooke: You are not suggesting that the proposal you see as coming off our nursing homes, are you?

Ms. Baldwin: Excuse me?

The Chairman: The motion up to this point is only dealing with licensees with or without this change.

Mr. Reycraft: Does licensee not refer to nursing homes?

Mr. Andrewes: I don't see what other choice we have given the restrictions placed on us by the rest of the section.

The Chairman: So the new words replacing the words 'servicing a substantial portion of' will now be 'whose nursing home is in the same area'.

Ms. Baldwin: Is located in.

The Chairman: Is located in. Fine.

Then Ms. Hart had a question.

Ms. Hart: I have a question of Mr. Andrewes. Is it your intention by this section that if there is a proposal for, say, an Alzheimer's unit in Metro Toronto, that the opportunity be given to every licensee in metropolitan Toronto?

Mr. Andrewes: It's not my intention, but I would think the substantive -- that it's the desire of the ministry to have an Alzheimer's unit in the west end. Then certainly the west end we looked at as the area.

The Chairman: Mr. Callahan.

Mr. Callahan: I think I would like to ask: Is there any provision for what constitutes an opportunity and what the rules are in terms of how long you wait and how broad the opportunity is and all the rest of it? You really get into a real kerfuffle because if you don't define it, you don't have the rules set down and you are going to find someone who is going to challenge it.

Mr. Andrewes: Mr. Callahan, due to the answer that I get from the minister from time to time on other things, that that would be spelled out in the regulations, I would assume.

I don't have any better answer than that. I assume that the current tendering practice for new licences -- there is some mechanism in the regulations spelled out and I would think that could be used as a pattern as well.

The Chairman: Mr. Cooke.

Mr. Cooke: I am just wondering, after the Parliamentary Assistant used the example of "Toronto" --

The Chairman: I think this is directed to the Parliamentary Assistant. I'm sorry.

Mr. Cooke: You used the example of Toronto when you were suggesting would there be an opportunity for all nursing homes in Toronto to apply for an Alzheimer unit. I thought it was the intention of the ministry that this section was only going to be used in remote communities where there was no alternative. Surely Toronto is not

remote, and there would be alternatives to the nursing home sector.

The Chairman: Scarborough.

Mr. Jackson: Scarberia.

Mr. Cooke: I just want to get a much better idea of what the intention is of the ministry of using this.

Ms. Hart: I was using the example of metropolitan Toronto merely to illustrate that -- I have some difficulties in the language of the proposed amendment. I recall using an example of a remote community for service -- Is not the ministry's intention to go out seeking services to be provided in nursing homes?

What the ministry would like to have is the flexibility in areas where it's necessary, but we did not exclude metropolitan Toronto. That is not to say that there will be projects in metropolitan Toronto, and I am really just using it by way of example because I have some difficulty with the language.

Mr. Cooke: The other question that would have some relevance as to whether Mr. Andrewes' motion should carry is: Do you see that the ministry will make a determination in a particular area that a service should be provided and then go to a particular home, or will the initiation come from a particular nursing home? You are going to initiate the process and I think that perhaps Mr. Andrewes' motion should carry.

If the proposal is going to come from a particular home, then I am not sure that it should carry.

Ms. Hart: It could be either way. There is no intention of the ministry to go out looking for services.

Mr. Cooke: You know, the point that I am making is that if in fact you are going to establish a service, then obviously if it's in the private sector it should go out for tender, but if someone is going to be making a proposal to you and you are going to determine whether in fact it's funded, that's a different matter.

The Chairman: Mr. Andrewes is getting confused with his motion.

Mr. Andrewes: I am confused now because you've said it could be proposed, but surely Mr. Davis' point is correct, that it's the ministry that would be going out looking for these services otherwise why would you put it in here?

Ms. Hart: Well, I am trying to foresee every possible way that this would come up. Conceivably it would be the residents council that sees the need in the community for this service and comes to the minister. So I suppose you would say that it's the minister initiating it, but really the idea came from the home or the resident's council.

The Chairman: Mr. Davis. What do you have to add.

Mr. Davis: I would like to add that if it is not the intent of the ministry to go out and initiate those services, then why doesn't the ministry or the minister simply withdraw that particular section? I would submit very strongly that if indeed it is the minister's intention to go into areas and go to the nursing homes and ask to provide services that aren't there now, and therefore if you are going to -- and there is no doubt in my mind that it is not an issue -- It is a distinct directive that maybe we haven't seen yet but will be coming. And therefore if you are going to do that, then in all fairness it should be open to the other operators in that area so they can have an opportunity to submit a proposal. Otherwise we will be looking at nursing home operators who wear red ties.

Mr. Callahan: Oh, William, William, we who have little faith.

The Chairman: I was hoping that red tie had been enchased and by all accounts it looks like it has. We'll move right along. We are starting to go over old ground at this stage. I am not sure if you want to.

Ms. Hart: I have a clarification.

The Chairman: Clarification coming forward.

Ms. Hart: There are two types of service. One type of service is for the residents in the home. The other type of service is an out-reach into the communities. Perhaps I wasn't clear enough when I gave my answer. It is certainly the intention of the minister to commission pilot projects and do that sort of thing with respect to services for the residents in the home. That is an intention.

With respect to out-reach services, there is no intention to do that specifically at the moment, but we see that the need may well be there and the requests may be generated from the homes themselves, from the resident's council and we did not to preclude that.

The Chairman: Mr. Cooke.

Mr. Cooke: Then a practical problem with the amendment presented by Mr. Andrewes is that if nursing homes, (a) decided to supply certain extra services for the

residents of their own nursing home under this amendment being presented, they would have to take proposals from other nursing homes to provide that service in nursing home aid.

If you own a nursing home and you are going to provide extra services under subsection 3 and I own a nursing home a block down the street, under your amendment I am going to have to be given the opportunity to apply to provide those services in your home.

Mr. Andrewes: It's not my intent, but if that's the interpretation, then we need to clarify that.

The Chairman: At the moment my opinion would be that the way it's worded would be that Mr. Cooke would have the capacity to suggest that his home deserved to add that program to its home more than yours did to yours and that wouldn't necessarily go into the other premises, although that is one of those things that might be foreseeable but highly unlikely. But is that element of competition, if you were generating something from within the home rather than as a request from the minister, would undo the way this is worded, be a possibility.

Any further debate on Mr. Andrewes' motion? If not, just to remind you, it was changed marginly so it now reads: Before entering into an agreement with a licensee under Section 3, the minister shall give every other licensee of these nursing homes located in the same area an opportunity to submit a proposal for the provision of the services that would be the subject matter of the agreement.

All those in favour of Mr. Andrewes' motion please indicate. Down. Those opposed? The motion is defeated 6 to 4.

Now I have not taken any of these subsections on 3 in total. shall subsection 3 carry? Mr. Cooke had an amendment to that which did not carry.

Mr. Andrewes has now moved to 3(a) which would actually be after that, so the 3, that which states simply: The minister may enter into an agreement with the licensee for the provision of services in addition to those provided for under this Act and the regulations and that subsection 3 carries. All in favour please indicate? Those opposed? Motion carries.

Now I think I have an amendment from Mr. Cooke to 13(4).

Mr. Cooke: I move that subsection 13(4) of the Act as set out in subsection 10(2) of the Bill be struck out and the following substituted therefor: Upon entering into an

agreement with the minister under subsection 3, the licensee shall give a written notice to the residents' council and to each resident or his or her representative of the additional services to be provided.

This simply, Mr. Chairman, means that if there is going to be services provided to the residents in the nursing home -- this is a mechanism so that all residents will be aware of that and be able to avail themselves of those services.

The Chairman: Thank you. Any discussion? Ms. Hart.

Ms. Hart: Yes, Mr. Chairman. We don't have any substantive disagreement with this proposed amendment. It does seem like a lot of paper, but I am not seriously disagreeing.

Mr. Cooke: Could I ask one question of the legal legislative counsel. Will we need at any place in this Act an actual definition of what or who the representative is of the resident and when that.. There was a point made in presentation yesterday to the committee that we are not suggesting obviously for a competent resident, that there should be able to be a substitute because there is only certain circumstances under which a resident's representative can be used and that obviously would be for people, I guess, who have been declared incompetent. But we don't want a nursing home or the ministry to be using a resident's representative where the resident is fully competent to represent him or herself.

Ms. Baldwin: I would suggest, if that's your concern, the first instance when the substantive provisions that raised the issue of the representative of the resident come up, you or the committee or we should look out to be sure that it does what you want. And if you want it spelled out, who is appointing the representative, whether the representative is in addition to or instead of a resident and all of those things, once I understand what your instructions are, I can make sure it's carried out. But to directly answer the question should there be a definition, really the question is what do you want.

Mr. Cooke: Well, I do not want a resident's representative used where the resident is fully competent because I think that can be abused and is inappropriate if one accepts the rights of an individual.

The Chairman: Might I suggest that although this perhaps begs the question like that about it, that we have stood down the definition of 'section', we have still to come to the residents' council definition of 'section' and those two chances give us two other chances to open that matter of whether or not we are in agreement with things

removing our needs. If not, we can always go back and reopen the section.

Ms. Baldwin: I am somewhat concerned though with regard to the motion of Mr. Cooke's that's in front of us, that he may want to be sure that it expresses his intent. It's not necessarily an issue of definition as your motion stands now. It would seem to read that: The licensee shall give written notice to either the resident or the representative. It's not spelled out under what circumstances it would go to the one or to the other, and if you want that spelled out, you should have --

Mr. Cooke: I assume the circumstances would be the same in all cases - whether it's used here - and there are other references I believe in the Act and amendments where 'a representative' is used. Is there some way that maybe we could just get you to look at that between now and sometime tomorrow?

Ms. Baldwin: Before that, it may be that you would want to ask the opinion of the lawyers from the ministry with regard to the issue of who is determining whether or not the resident is competent. It may be that you are sending me out on a journey that may cause other problems that I am perhaps not the best person to answer.

The Chairman: We'll just get a response, if we can, on that at the moment.

Mr. Campbell: If you look at 12 sub (1) of the existing act, the language used there in that particular subsection is: The residents or their legal representatives where the residents are unable to do so. The term 'legal representative' is used in that instance, and the qualifier, 'where the residents are unable' to do shall do such and such.

The wording in the proposed amendment just speaks of 'representative', and there is no notion of legal representation. It would seem to me that you could delete the words 'or his or her representative' and leave it to the general law to speak to whether or not the resident or someone else for the residents as a matter of general law is to receive a copy.

I would suggest that perhaps either approach, either to specify 'the legal representative' or 'the resident planning to do so' or delete 'or his or her representative' and just leave it to general law.

The Chairman: Which is your preference, Mr. Cooke?

Mr. Cooke: You are saying either has the same impact.

Mr. Campbell: The second, deleting the words 'or his or her representative' leaves it to the general law, whatever the common law that's specified, who may speak for another. So that's perhaps not quite as precise as the first option.

Mr. Cooke: So the choice is scratch out everything after 'resident' or put 'or his or her legal representative'?

Mr. Campbell: Where the resident is unable to do so.

Mr. Cooke: Maybe legislative counsel could just respond as well. I just want to make sure that it's also clear to the nursing home operators. Sometimes if it's not spelled out in the Act, they don't know.

Mr. Campbell: On that point, if you add the words 'legal representative where the resident is unable to do so', you raise a whole can of worms as to who decides who is unable or who isn't. It might be better just to delete the words in their entirety and leave it to the circumstances in each particular case.

Mr. Jackson: Supplementary. And what is their inability to receive a notice? Is that as simple as that?

Mr. Campbell: Well, it's not that simple.

Mr. Cooke: You're exploiting the service. I mean, obviously the purpose for serving someone and letting them know that the service is available, that they might take advantage of it.

Mr. Jackson: I understand the impact. I'm just trying to understand what it is they are unable to do. Are they unable to receive a notice as broadly defined or is it unable to comprehend the notice?

Mr. Campbell: I think the implication has to be 'unable to comprehend the meaning of the notice'. I agree with you that if you merely hand someone a notice and they don't understand it, I don't think it's really meeting the purpose of subsection 13(4).

Mr. Jackson: I merely wish to understand what 'inability' referred to.

Mr. Campbell: That wording appears in subsection 1 of Section 12 of the existing Act and there is no code or no definition or procedure whereby one determines whether a resident is 'unable' in the circumstances. The wording is not particularly helpful in that sense.

Mr. Cooke: So how would it operate under section 12

to make a determination under that section of what that means?.

The Chairman: Do I understand that the current act must have --

Mr. Campbell: The current act is not set out of procedure for determining that. For that reason, we would suggest that you delete the words 'or his or her representative' to avoid the very problem that is being raised. The determination of inability is a very fine medical-legal question.

The Chairman: But it also means that you haven't solved the problem of somebody trying to represent --

Mr. Johnson: It means effectively that you are leaving that preconstructed stress essentially to the licensee, et cetera, leaving it to their good sense to determine whether to give it to the resident or to a representative. But it's not defined. I assume the problem is that there are people who wander in and out of competence, as it were, day by day.

The Chairman: Hour by hour. Mr. Cooke, what's your desire?

Mr. Cooke: Let me just suggest that it's important because this is going to come up later in the Bill. I believe there are other sections that refer to residents' representative as well. I can think of a program called Reality Orientation. If Reality Orientation were an extra service that was provided under this section, it would hardly make sense that the resident was served a notice that this program was available when, if they needed the program, they obviously wouldn't be able to comprehend the fact that this notice was offering them something.

So it's meaningless to just serve if the resident can't comprehend. And I am not sure whether the licensee would understand exactly what to do unless if we just left it after the word 'resident' because it doesn't spell it out. So what I would prefer to do is just after the word 'resident or his or her legal representative' 'where the resident is unable to understand the subject matter of the written notice'.

Mr. Jackson: Or that judicial services be provided.

The Chairman: So it would now read: Upon entering into an agreement the Minister under subsection 3, the licensee shall give a written notice to the residents' council and to each resident of his or her legal representative where the resident is unable to understand the subject matter of the additional services to be

provided.

Mr. Cooke: Correct.

The Chairman: Is there any further debate on this matter? I see none. All those in favour of Mr. Cooke's motion please indicate. The motion is carried.

So I think that's all for Section 10. Now Section 10 as amended carried.

Now on to Section 11. I have at least one amendment to (2). I have no amendments that I can see before me to section 11 sub 1. Am I accurate on that? So we have no amendments for 12(1) sub 1 (d), (e) and (f). Any discussion? I see none. All those in favour, please indicate. Carried.

11 sub 2. I have one from Mr. Cooke.

Mr. Cooke: Mr. Chairman, I move that Section 14 of the Act, as amended by subsection 11(2) of the Bill, be further amended by adding thereto the following subsection:

The licensee shall provide each resident or representative -- and I am going to have to use the same wording that was just used in the section before where we talk about representative -- The licensee shall provide each resident or, that additional wording, representative of the resident with a monthly statement in the form prescribed by the regulations of monies received by the nursing home on behalf of the resident and charges made to the resident for the services rendered by the home.

The Chairman: So it should now read: The licensee shall provide each resident or his or her legal representative where the resident is unable to understand the subject with a monthly statement in the form prescribed by the regulations, et cetera.

Mr. Cooke: Basically there are additional charges at the home. This would provide the resident with a monthly statement and this is an enabling section. The actual prescribed form would be done by regulation by the ministry.

The Chairman: Ms. Hart.

Ms. Hart: Thank you, Mr. Chairman. We have no difficulty with the intent of this amendment if it is just the additional monies that are charged to the resident's account. Our concern, and I am not sure by the wording, was whether all of the funding coming from the government and from the resident had to be broken down on a monthly basis apart from additional charges. It's the word 'monies received by the nursing home' because the nursing home

receives money by way of funding from the residents and the government.

Mr. Cooke: That would not be a particular problem since the monies received are a common figure only adjusted every three months, and I think there is a quarterly adjustment based on the cost of living because it's separate pensions.

Ms. Hart: No, I would quite agree with you if it were just the bulk funding. What I am getting at is: Are you looking for, under this section, and I don't think you are, the amount of the funding that's allocated to that resident and that resident's laundry, for example, if that were not an extra charge, but that was part of the global overhead of the home. That's our concern with the wording.

Mr. Andrewes: It's the extra charges, I would assume, for services like hairdressing and --

Mr. Cooke: Yes. I understand your concern, but since it's basically an enabling section where the form and the details are set out in the regulations, I don't think that there is a concern or should be a concern.

The Chairman: The language does indicate that you can control it by regulation.

Ms. Hart: Might we have one more comment?

The Chairman: Sure.

Mr. Campbell: We might substitute 'received'. We might use the word 'held' by the nursing home. This would get into the idea of the residents' money from other sources, from non-government services and so on, and the other possible addition could be towards the end of the subsection, reference pursuant to agreements under this section, so it's clearly linked to these additional -- the add-ons which could --

Mr. Cooke: Except it's not entirely. I mean, if somebody -- I think the concern or at least the way I understood your concern was that if there was income from laundry, then you don't want that divided up by the number of residents and have to be attached on a monthly statement. I don't think that that is contemplated at all in this amendment.

However, I think it is contemplated that there would be a monthly statement that would say "There has been this much income directly attached to you." There might be a certain amount from OHIP and there might be a certain amount from Green Shield. That would be the income and then the expenditures would be listed which I don't think is terribly

complicated or difficult.

Ms. Hart: Might I?

The Chairman: Certainly.

Ms. Hart: I am not sure exactly how to do this procedurally, but I think my problem would be addressed if we took Mr. Campbell's suggestion, and perhaps I could move an amendment to substitute the word 'held' for the word 'received' in the fourth line of Mr. Cooke's amendment.

The Chairman: That's in order.

Mr. Cordiano: I don't know if it was received.

The Chairman: Yes, we're replacing the word 'received' with the word 'held' with the suggested amendment.

Mr. Jackson: What's the practical impact of that?

The Chairman: I don't know why he is interested in this because he is going to have to administer this afterwards, but still, go ahead.

Mr. Sapsford: The nursing home will receive income on a monthly basis from both the ministry and the resident, the bulk of which would go to cover the operating costs of the nursing home.

Mr. Cooke: Correct.

Mr. Sapsford: If I understand this, the intent of this is to provide a statement to the resident for any charges above and beyond the general extended care so they wouldn't be showing monthly income from the ministry on the resident basis and then showing their expenditures monthly by resident but rather only showing a statement with the additional charges made for things like hairdressing and so on.

Mr. Cooke: Yes, I guess so. How I --

Mr. Sapsford: You said income from OHIP.

Mr. Cooke: Well, how I envisioned it was that there were two types of income on behalf of the resident. The resident pays a certain amount for co-payment or paid for by a third-party insurance, and there is the money that comes from OHIP. That is the income.

The expenditures then would have a huge lump sum of what it costs to stay in the nursing home, and then there would be the additional charges. Just like a hotel room.

When you come out of a hotel room the day after you have been there you have got the charges; the main charge is for the room and you have got all the additional charges for telephone and everything else that usually adds up to more than the original charge.

The Chairman: Do they get these movies in nursing homes?

Ms. Hart: Mr. Campbell.

Mr. Campbell: There is also a third category of income and that would be income from private sources, whether it be investments and so on, pensions and so on and so forth. It seems that my initial suggestion of the word 'held' be substituted for the word 'received', is it designed to address in effect that extra third source of income? As you have spoken about your intent, it strikes me that we are perhaps speaking to some other cross purposes and we're not perhaps dealing with precisely what you were after. I wonder perhaps if that can be looked at later on. It's assumed to have three sources of income.

Mr. Andrewes: Is it your intent, David, to give the resident's statement of the extra expenditures plus to advise the resident of the amount that the nursing home is receiving on their behalf?

Mr. Cooke: Exactly.

Mr. Andrewes: That's interesting. That's what we wanted to do in Bill 94 and you didn't want to support it.

Mr. Cooke: Well, I don't remember that but --

The Chairman: Mr. Sapsford.

Mr. Sapsford: Every resident of a nursing home receives on a quarterly basis the charges or the amounts that are given to the nursing home both in terms of the government portion as well as the co-payment. So that information is provided already to residents, and in a sense, they know what is being paid either by themselves or on behalf of the government to the nursing home in terms of monthly or daily charges.

That's what I am confused with in this particular amendment. If it's a question of what charges does the home make beyond the standard amount that's paid for extended care, then that makes no sense, but to give a monthly statement simply saying the government pays \$28 a day and you pay \$20 a day is something that is self-evident because part of it is controlled by the regulation.

Mr. Cooke: I understand that, but it's not always

self-evident. I mean, whenever you get talking to the Ministry of Health about wanting to know how much consumers are actually paying on their own or having payed on their own by someone on their behalf, it seems difficult. They get lots of people. They are always talking to me when they come out of hospitals saying, "We would like to know how much it costs," and I have to go through this huge process to try and find out how much it costs.

It seems to me that it's very simple. What I contemplated this amendment was really doing, and that was that whatever the insurance companies or the individual pay to the nursing home for the basic service, that would be recorded on a monthly form, and any additional services that the nursing home charges against that individual's account would be recorded and the person would get that statement at the end of the month.

Mr. Sapsford: Well, I guess the only point I would like to add is that residents are told on a quarterly basis what the charges are for extended care, and that's given to every resident in the province right now.

Mr. Cordiano: So what you're suggesting, Mr. Cooke, is that that be done on a monthly basis and in addition have all the extra costs added on to that?

Mr. Cooke: Yes, a consolidated statement for the individual every month.

Mr. Cordiano: Why do it every month? I don't understand.

Mr. Jackson: Harvey's do it on a quarterly basis.

Mr. Cooke: They only do half the story on a quarterly basis.

The Chairman: I hate to remind you all that we are debating the word 'held', the word 'held' to replace the word 'received'.

Mr. Jackson: I heard counsel say that --

The Chairman: That wasn't his motion. Counsel doesn't get to make motions. The wording means -- in fact why everything has been in order up to this point is that I think it can easily be interpreted that changing to the word 'held' leaves more to the notion of extra monies that are there for the individual and the added cost that may come out rather than the ongoing cost which 'received' would apply to.

Ms. Hart. You're speaking to your motion.

Ms. Hart: Yes, Mr. Chairman, I propose to withdraw my amendment upon reflection and to propose a different amendment, if I might. To leave Mr. Cooke's amendment as it is except for the word 'monthly' I would substitute the word 'quarterly'.

The Chairman: Okay. The motion by Ms. Hart is to replace the word 'monthly' in the second line by the word 'quarterly'.

If you would like to speak to that.

Ms. Hart: Since it is currently being the -- I think I better understand now what Mr. Cooke is looking for, and if he were prepared to go along with giving this financial information on a quarterly basis to ensure that it does get to every resident as well as the additional costs that are charged against the resident's account, then that's something that we could live with.

The Chairman: Thank you.

Mr. Jackson.

Mr. Jackson: Who publishes this quarterly report that's circulated to every resident in Ontario? That is generated by the province and distributed by the licensee?

Mr. Sapsford: That's correct.

Mr. Jackson: So if I interpreted the Parliamentary Assistant correctly that now the licensee would produce the quarterly, or would the province produce the quarterly and they would just enjoin it with their summary bill and now they have got two? I mean, I would like to understand how, what amount of bookwork is involved here.

The Chairman: Well, I don't think we should try to design the form, but I think it's fair to ask the question if it's one form or two.

Mr. Sapsford: Well, the licensee will not know what the charges are until the province decides. The rates of payment are altered quarterly on the basis of changes to Canada Pension or the security and gain and annually when new rates are agreed to between the province and the association. So the licensee would only know what they are after the ministry has informed them. And we inform the licensee as well, a letter from either myself or the Assistant Deputy Minister to each resident. It's timing as well with the chronic care co-payment as well, so this letter goes as well to residents in chronic care hospitals.

The Chairman: If I might, I just don't think to spend time wondering about how then this would be applied in terms of the actual -- how the paper will come in the least

confusing way and we should leave that up to the bureaucracy to handle if this were to pass.

Mr. Jackson: Well, Mr. Chairman, I am not prepared to support it until I understand it. And one of the reasons is, that given the additional amount of work that's involved here, I understand the intent and the merit of the recommendation, but I am not terribly excited if this implies additional charges that aren't covered for residents as a result of the additional cost of bureaucracy. If it's being borne by the licensee, then it's going to be passed on to the tenant, and before I start doing things like that, I would like to understand how it's going to happen.

There is a reason why I am asking these questions.

The Chairman: Is there a cost to be passed on to the tenant? Is that something to be concerned about, Mr. Sapsford?

Mr. Sapsford: Well, it's an administrative concern because this particular motion is requiring the licensee to produce these statements of account. It's something that they do not now do because the ministry informs residents quarterly of what the actual charges are, so you are asking the licensee to do something in addition to the ministry.

Mr. Jackson: And there is nothing limiting the licensee from passing on those administrative charges for this motion to the resident?

The Chairman: Mr. Cooke.

Mr. Cooke: Well, I am not exactly sure --

Mr. Jackson: I've asked him a question, Mr. Chairman and I didn't know whether --

The Chairman: He said he wasn't sure.

Mr. Jackson: Oh, I didn't hear him. I'm sorry. Thank you.

The Chairman: Mr. Cooke.

Mr. Cooke: I am not exactly sure what Mr. Jackson's point is, but when you are passing legislation that advises consumers and gives them the proper information as to what they are paying for, what they are paying, whether it was the provision that was passed in Bills 54 and 55 for pharmacists or whether it's other bills, it costs the private sector some money. And obviously to administer this section there is going to be some paperwork involved but that's appropriate if it's in the private sector and consumers will be appropriately advised.

The Chairman: Mr. Callahan.

Mr. Callahan: I will follow-up on what Mr. Jackson has said. If complaints have been made, then perhaps the quality of service available to residents, particularly for-profit homes, is whittled away by any additional costs that are involved, and clearly there is going to be a cost and that cost is without a doubt going to be passed on to the resident. You know, I wonder if doing that, as I understand from legislative counsel, that information is already provided on a quarterly basis to the residents; is that correct?

The Chairman: A small portion of the information that we are now talking about is provided on a quarterly basis.

Mr. Callahan: And surely even if the government picks up the cost of preparing the documentation, I understand it has to be passed out in the nursing home by the nursing home staff or whatever. And that's obviously got to not only be a cost but it would have to detract from the time that they would have to service the people who are the subject matter or the significant subject matter of the nursing homes. I can't support it.

The Chairman: The province obviously cannot produce the information here on the costs.

Mr. Jackson: I understand that.

The Chairman: That would be in addition to that.

Mr. Cordiano.

Mr. Cordiano: Upon reflection, I think that it would be burdensome for the nursing homes to do that. Obviously that's what we are talking about, but if you are looking at the nursing home publishing a financial statement at the end of the year, it would then be presented to the residents' council. Would it not be appropriate for those kinds of costs to be included at the end of the year in that financial statement, which no doubt they will, and to have the residents' council have that information available to them for their purview, for their analysis of what's going on with regard to those additional costs for each resident.

Perhaps have a further refinement of those financial statements to reflect those additional costs at the end of the year cutting down on necessity for doing that four times a year, as we have now stated.

Mr. Jackson: Mr. Chairman, just by way of example, some of the nursing homes in my area, they have somebody from the outside coming in and performing the hairdressing,

hair cutting services, contracted separately. And if the administrator receives this new legislation and says "Okay, now you have to provide an invoice for every time you perform this service or provide a monthly reconciliation or a quarterly," and the person says, "Look, I am already doing a half hour hairdo for \$3, there is just nothing in it for me to do this anymore. Good-bye."

Now what do we do? I mean, I understand Mr. Cooke's amendment and I understand its intent and it's to be applauded, but if it's practical application and the nursing homes is going to net those kinds of results, I am not so anxious to proceed with it that quickly. It is a new amendment, and anyway, those are the kinds of fears I have and I understand the government's requirement because we have federal monies and we are required to advise the citizens of this province where that money is coming from and how it's being spent and it's being tabulated on their behalf. But something like this, it's just burdening not-for-profit or for-profit operations and maybe there will be a cutback in service or extra expenses passed on to the residents.

I don't think that's what we should be doing here in this legislature.

The Chairman: Ms. Hart.

Ms. Hart: In view of the discussion, Mr. Chairman, I will withdraw my amendment to the amendment.

The Chairman: We are now back with the monthly rather than quarterly.

Mr. Cooke: Mr. Chairman, some members of this committee including the Parliamentary Assistant are being terribly realistic. The reality is that this is a major problem. Residents' comfort allowance is not always being properly administered. In some cases the money is being misappropriated by owners of nursing homes. All one has to do is even talk to the Ministry of Revenue of how it operates with some of the private sector rest homes and how they have actually had to go in and investigate to see what happens with some of the property tax credit money.

It seems to me as a basic right, that a resident has a basic right to expect that the money that is being spent on his behalf or her behalf, that they should get a monthly or, I was willing to accept your quarterly reporting of how that money has been spent.

If you are not willing to give that much, then it doesn't say much about the acceptance of protecting consumers, but I am telling you, there are enough cases. Talk to Concerned Friends, talk to other advocacy groups,

there are enough cases of people that have had their comfort allowances stolen.

Mr. Reyecraft: In the interest of expediting this, might I suggest a five minute recess?

The Chairman: Yes, I am trying to adjourn us at four o'clock, but why don't we take a five minute recess and we can come back together at two minutes to five.

Mr. Callahan: Mr. Chairman, I wonder if it will assist us if we can get some kind of an idea of what we are talking about costwise. I mean, if it's peanuts, that's one thing, if it's significant enough that it's going to detract from the funds that will be available in the for-profit or not-for-profit, then I think it's an important issue and I would agree with Mr. Jackson.

If it's insignificant, Mr. Cooke, I know the reason you are asking for it and I think it makes sense, but if it's going to cost a fair amount, then I think that what we are doing is we are sacrificing the quality, perhaps the quality of care for --

The Chairman: Is this part of our adjournment?

Mr. Callahan: I am just suggesting that we --

The Chairman: Why don't you get this discussion going here with the ministerial people in the next few minutes, and when we resume you will tell me whether you've got what you need.

Recess until what I am going to call two minutes to five by that o'clock.

--- Recess at 4:05 p.m.

--- Resuming at 4:09 p.m.

The Chairman: Did you all enjoy your recess?

We have before us a motion by Mr. Cooke to amend 11(2).

Mr. Cooke: Mr. Chairman, may I suggest that we stand this down and we will deal with it tomorrow?

The Chairman: What an effective recess. Is there any other matter that you would like to deal with at this time before I adjourn? If not, we are adjourned until tomorrow morning at 10 o'clock.

--- meeting adjourns at 4:10 p.m.

S-81



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

THURSDAY, MARCH 5, 1987

Morning Sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Sterling, N. W. (Carleton-Grenville PC) for Mr. Baetz

Also taking part:

Ramsay, D. (Timiskaming L)

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Johnson, J. M., Director, Legal Services Branch

Sapsford, R. T., Director, Nursing Homes Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, March 5, 1987

The committee met at 10:15 a.m. in room 228.

The Chairman: We are dealing, as some of you may recall, with Bills 176 and 177. We are proceeding remarkably quickly through Bill 176, and that is only partially because we keep standing down things. We actually do approve things and get them done.

So I think that we're pleased with the kind of rhythm that we've got ourselves into, and I hope that by the end of today we will be a long way towards completing the act and have only a couple of matters left to be dealt with by next week.

So, as I recall, when last we met, we were dealing with Section 11, which we have carried. So 11 Sub (1) we carried. We are now dealing with 11 Sub (2). And we've been debating a motion by Mr. Cooke, as I recall, about what should take place with the monies that are held for residents or received by the home for residents, and during, after a recess and before it was concluded.

Mr. Cooke.

Mr. Cooke: Mr. Chairman, I have a motion. I move that Section 14 of the act as amended by Subsection 11(2) of the bill be further amended by adding thereto the following subsections.

"(3), the licensee shall provide each resident or representative of the resident with an itemized quarterly statement of monies held by the nursing home on behalf of the resident and charges made to the resident for services not mentioned in clauses 1(a) through (c)."

The Chairman: This means, I presume, that you're withdrawing the other one?

Mr. Cooke: Exactly.

The Chairman: The one that was before us was withdrawn and reintroduced as the new Sub (3) to Section (2), Subsection (2) of Section 11. Do you wish to debate?

Mr. Cooke: Well, Mr. Chairman, rather than confusing things, I'll just place the motion.

The Chairman: Very good. And, Mr. Sterling, who wasn't here yesterday, on Page 10 of the existing act, at

the bottom of the page, 11(2), and this is an amendment to that, which you should have just received a new copy of a few minutes go.

Actually, as there's no amendment to Sub (2) of (2), why don't we in fact move and carry that and then accept the motion which has just been put forward.

All those in favour of Sub (2)? Agreed.

Okay, debate on Mr. Cooke's motion.

Mr. Cooke: I might just say, if anyone is confused by the left-hand column where it says "monthly statements," it should say "quarterly statements".

The Chairman: There was pretty long debate about this yesterday. Anybody wish to add anything further this morning that we missed yesterday?

Mr. Reycraft?

Mr. Reycraft: Mr. Chairman, I assume, reading the amendment, that it would, that the statement would not include payments made to the nursing home by the Ministry of Health or any other provincial agency, nor would it include co-payments made by the resident? Could Mr. Cooke confirm that that's his intent?

Mr. Cooke: That's my understanding, yes. That's not, that's the intention of the motion.

Mr. Reycraft: Thank you.

The Chairman: If there's nothing further to say and -- I'm a little reluctant to end quickly as Mr. Sterling wasn't here for a very long debate yesterday on this, which just for your information yesterday on a couple of matters.

One was that it was first done as a monthly statement which some people thought it would be too onerous. The second was that it seemed to be tied to quarterly ministerial information that had to be sent out anyhow allowing CPPI to make their co-payment charges and that kind of thing.

And this subsection, the word changes in this are the words "quarterly" and the verb "held," so that's referring primarily to residents' money which will be held for comfort allowance and things like that by the home.

Ms. Hart: If I might just add to that, Mr. Chairman.

The Chairman: Miss Hart.

Ms. Hart: The additional change is in the last line, essentially excluding the services mentioned in clauses 1(a) through (c), and which we're advised by legislative counsel excludes all of those, all of that financial information that the ministry sends out in any event.

Mr. Sterling: Is there any form that this would take, this statement? Is there any regulatory-making power in the statute to specify the form that this would take, or is that left to the discretion of the nursing home?

Ms. Hart: As I understand it, it's left to the discretion of the nursing home, but perhaps, Jack can --

The Chairman: Mr. Johnson.

Mr. Johnson: It is left. I mean it's not spelled out, and there is not a regulation-making power, but you'll note the word "itemized," which would require a degree of breakdown.

Ms. Hart: If I might add to that, one of the difficulties that's specified on the forms is that many of the nursing homes have their own computers and which forms, it would be administratively difficult if we imposed a form.

Mr. Sterling: Did the Nursing Home Association have any problems with this? I hope they didn't.

The Chairman: No, there was no discussion before the committee of this specifically from the Association and I don't -- there has been interaction since that I've noticed in the halls. And I have no idea if they've touched on this matter or not. Members can advise me, and Mr. Nightingale is either nodding or not nodding, so I don't know. It's fine with him. I don't know how to interpret the nods. Nods are always so difficult to get down by Hansard.

Mr. Sterling: Could I just ask one other thing?

Mr. Callahan: Except when you're nodding off.

Mr. Sterling: When you're talking about the representative of the resident, we're often talking about a potential conflict as to who that representative is. Is there a definition of the representative of the resident?

Mr. Cooke: We've had extensive discussions about that, but maybe Mr. Johnson or legislative counsel would like to reply. That was one of the concerns we talked

about yesterday.

Mr. Sterling: Well, listen, I don't want to go back over the whole thing.

The Chairman: Suffice it to say that there's another section of the act which does talk about legal representatives, and it was felt yesterday that it was best to have all things fall back to that earlier definition in the act, not 4, but of the large act, the Nursing Home Act, and use that as a definition rather than trying to, in this case, start to add something which would require again new tests of competence or whatever.

Mr. Cooke: And the whole matter is being presently reviewed by the Attorney General's Office.

Mr. Sterling: I just worry about the privacy of the elderly person from inquiring relatives as to, you know, where does the discretion to release that information come? That is my concern.

The Chairman: There was another question, a couple of questions specifically raised yesterday. In response to that, Mr. Johnson, in terms of what we're dealing with here, the itemized accounting?

Mr. Johnson: In the context of this section, although it sort of has an application elsewhere, this whole question of representative, as you indicate, is a very vexed one, with people having, I suppose, today some understanding and tomorrow not some understanding.

It has been the decision in approaching this bill, to leave that, continue to leave that just to the good sense of the people involved. That's not the happiest solution, but the other solution seems to be to set up an extremely complex system of determining who is and who is not competent and have that almost constantly changing evaluation of the legal structure and everything else.

I guess we're hoping that a nursing home operator would deliver such statements to the resident, unless in their wisdom, and probably in consultation with the family, they concluded the resident just was unable to comprehend what it was.

Mr. Sterling: I guess I was concerned not so much with that because I have, in this particular area, I have faith in most nursing home operators to operate in a very humane and positive sense for their residents. But I have concerns about somebody outside wanting to know about the business of this elderly person and how does the nursing home operator say no to that person when they have every right on a, let's say on an objective basis, to say no.

You know, how do they say no to a nosy third cousin as to what's happening with the financial affairs or this particular financial affair of a resident? Can he say no?

Mr. Johnson: I would say they can and should. I don't think any relative can come along and say, "Hey, I'm the representative today".

The Chairman: Which is what they'd have to do. But I think this question of the confidentiality of some of the new information that we're talking about as we go along, that is required, it's something that I think we should keep in mind and members have concerns, then we, I'm sure, I'll obviously be interested in hearing them, and we can reopen sections if people thought that that was an oversight that might leave residents vulnerable.

Mr. Sterling: I understand the intent of the section, and I think it's a good section in terms of the accountability part of it. But there's an alternate side to it.

But I guess that's satisfactory for me, Mr. Chairman. Thank you.

Ms. Hart: Mr. Sterling, we may wish to draw your attention to Section 2(1a) Number 8, I think it is, 6, which, in the statement of principles, which deals with the opportunity to communicate in confidence. And the whole intention of the statement of principles is that the whole act would be interpreted having those principles in mind. So confidentiality is certainly addressed in that manner.

The Chairman: Just for your information, that section is wide open and whether or not it is going to turn out to be a set of principles or a bill of rights or whatever is still up in the air, but that was one of the ways that this matter had been thought of up to this point.

Getting back to the motion by Mr. Cooke, any further discussion? Seeing none, all those in favour of Mr. Cooke's amendment to Subsection 11(2), indicate. The motion is carried.

I don't think I have any other amendments to Section 11, so -- am I wrong? So Section 11, carry as amended? Carry.

I have no amendments at all before me for Section 12, which includes a new 15.

Mr. Cooke.

Mr. Cooke: Mr. Chairman, I don't have a written motion, but I would like to simply move that the word

"may," in the second line at the top of Page 11 and then also the word "may" in Section (2), where it says "the minister may," that both of those should be changed to "shall".

The Chairman: If I follow this, Mr. Cooke's amendment would be that Subsection 15(1), Sub (1) should be amended, the word after minister, the word "may" after minister should be replaced by the word "shall, and the clause after that "withhold payments due" and "bring an action to recover". And then under Subsection (2) of 15, that again after the word "minister," the word "may" should be changed to the word "shall".

The motion is in order. Mr. Cooke?

Mr. Cooke: It's simply put. If in fact there is a payment that exceeds the amount permitted, it would seem to me that there's no need for discretion, that if the payment exceeds what is permitted, that the money should be collected by the minister.

I don't understand why the word "may" would be used. It's a clear, clear case and I'm just suggesting that there's no need for discretion. The money shall be collected.

The Chairman: Thank you, Mr. Cooke. Any discussion? Miss Hart.

Ms. Hart: The problem that we have with that is it doesn't, that by removing the discretion, you take away any possibility of rectifying an error. For example, if it was withheld in error, a computer glitch, or something like that, you set in motion a whole mechanism, including the bringing of an action. And it seems to me that there needs to be that element of discretion.

The Chairman: Mr. Cooke.

Mr. Cooke: Obviously, if there's a computer error or if it's been withheld by mistake, then this section doesn't apply.

Ms. Hart: No, we disagree with that.

Mr. Cooke: I mean, if it's been withheld by mistake or there's an order made that there be, that the money be refunded or held by the ministry and then refunded. But the fact is if in fact the ministry has the wrong information, then obviously this section doesn't click in. If the nursing home advises you or whoever that it's a computer problem or whatever, then there isn't a problem. There hasn't been a violation.

Ms. Hart: I'll ask Mr. Sapsford to refer to that.

Mr. Cooke: Sure.

Mr. Sterling: I have a problem with your amendment, Mr. Cooke, in that you say the minister shall bring an action to recover from the licensee, when there are triggered actions, some kind of preconditions associated with it. And if in fact he's able to recover those costs and those other things, the way the legislation would read, they'd still bring the action; is that right?

Mr. Cooke: No, because the first section, 15(a), says "can withhold payments due to the licensee to recover the excess payment". If that's been done, then the money has been recovered, and there's no need to bring an action. The only time you bring an action is when you haven't been able to recover under Section (a).

Mr. Sterling: I don't think the wording is good with the amendment, if it's the desire of the committee to carry it.

The Chairman: Would you like a legal opinion on this?

Mr. Cooke: Sure.

The Chairman: Which one of our members is brave enough to step forward and comment in terms of the distinction? What distinction is to be made by --

Mr. Sterling: Well, Mr. Chairman, I'm informed by our party that we would not be supporting it, so that a legal opinion is not of relevance.

The Chairman: No further debate on the amendment? All those in favour, please indicate?

Mr. Cordiano: Was there a comment? I thought one of our legal counsel --

Mr. Callahan: Mr. Sterling said it was not necessary because their party was not supporting it.

Mr. Cordiano: Oh, okay, fine.

The Chairman: This is the committee dealing with the Nursing Home Act. It is Thursday.

We, the request is not before us for any legal advice, and the opinion is that two parties at least now have been put forward in terms of the opposition. I think it might save time if we just move to a vote.

Mr. Jackson: We have three amendments in this section from the NDP, which is the exact one we're dealing with?

The Chairman: We're dealing with an amendment which is changing the words "may" in 15(1) and 15(2), to "shall".

Mr. Jackson: Okay. Thank you.

The Chairman: All those in favour of Mr. Cooke's motion, please indicate. Down. Those opposed. Motion is defeated.

So Section 12 carried? Carry.

Section 13, we have an amendment from Mr. Cooke. It's again a substitution by Mr. Cooke.

Mr. Cooke: I'm wondering if -- we can deal with my amendment, but I'm wondering on Section 13 whether it would be appropriate to stand down because we're referring to residents' council advisors and we haven't dealt with that section of the bill.

Now, my amendment deals with a different matter and we could deal with my amendment, but the part on residents' council advisors, I'm not sure we could --

The Chairman: So you're suggesting, Mr. Cooke, that we stand down the language which is presently in the bill and you would be adding a Sub (1) to --

Mr. Cooke: Right.

The Chairman: Do you wish to show there or do you wish to stand that down until we --

Mr. Cooke: We can deal with the whole Section 13 at once, if you want.

The Chairman: I think we might as well. We'll stand down the section and come back to it.

At the moment I have what exists in the act, which we'd have to deal with before we dealt with Mr. Cooke's motion anyway. So rather than standing it down and then dealing with Mr. Cooke's motion, we'll stand down the whole section at this stage.

Section 14. Do we have amendments? The first amendment I think I have includes, and please catch me if I've missed one from any other parties, is 14(4) made by Mr. Cooke.

Mr. Cooke: I'll read the amendment into the record, but I would like to deal with it by a question first.

The Chairman: It's just that I would like to deal with the sections just prior to that, as there's no amendments to that.

Mr. Cooke: Okay.

The Chairman: Section 14, Sub (1), (2), and (3), and there's --

Mr. Cooke: Sections (1) and (2).

Ms. Baldwin: It's Subsection (3) of the bill. It's (2a) of the act.

The Chairman: This would, if you carry this, it includes the section at the top, the information "warrant" on the left-hand side, and then (2a), okay, at the top of Page 12.

There are no amendments from the parties for those sections. Shall those sections carry? Carry.

Mr. Cooke, would you like to read yours into the record?

Mr. Cooke: Before, if everyone has the amendment, I may not need to move it. I just have a question of the ministry. What I'm concerned about is that since, in the powers of inspection, do not specifically refer to the use of photographs and any kinds of electronic recordings in order to gather evidence, there was a concern expressed in briefs that were presented to us and it's also a concern of my own that this is an important tool to gather evidence, that inspectors could use to gather evidence, and I'm wondering whether the ministry uses that now and whether they have the power now and whether they would need this amendment?

Ms. Hart: It's really a two-part question. Can we have both operational and legal?

Mr. Cooke: Sure.

The Chairman: Shall we start off, Mr. Johnson, take the legal and Mr. Sapsford the operational, in whichever order you want.

Mr. Johnson: Okay. I was just going to ask Mr. Sapsford if in fact they do, which I believe they do, use these devices.

Mr. Sapsford: Yes, Mr. Chairman. The question of recording equipment is used less frequently, but the question of photographs have been used in the past for evidence and --

The Chairman: Mr. Johnson.

Mr. Johnson: In my view, sir, the ability to take photographs and the use of recording devices is implicit in the right to inspect the premise and the operations. I would be quite, I guess quite shocked, if that were not the case. And I believe that there are a large number of other statutes which have similar sort of rights to inspect without spelling out this detail.

I would have no doubt on it.

Mr. Cooke: In view of that, Mr. Chairman, I don't think there's a need to move the amendment.

The Chairman: Thank you. So the amendment is withdrawn.

Mr. Jackson: I have a question on that, though.

The Chairman: Mr. Jackson.

Mr. Jackson: Mr. Cooke, did you imply with electronic recording devices wire tapping?

Mr. Cooke: Pardon me?

Mr. Jackson: Did you envisage the use of electronic recording devices?

Mr. Cooke: No, that wasn't the intention, Mr. Jackson, but that was one of the concerns that had been expressed to me since the motion had been tabled. The purpose of the amendment was to make sure that the ministry had the power to take photographs and perhaps even use videotape if in fact it was useful in gathering evidence to prosecute a nursing home.

Mr. Jackson: I would, since we were discussing this, very briefly, I want to ask a question about the resident's right to be notified that they're being videotaped.

Mr. Cooke: That's dealt with in another section.

Mr. Jackson: I'd just like to know that, is we don't need Mr. Cooke's amendment -- if we could ask the counsel that?

The Chairman: Who are you asking the question of?

Mr. Jackson: The legal counsel.

The Chairman: Which one?

Mr. Jackson: Any one.

The Chairman: Mr. Johnson, is the whole question of notice to residents, residents specifically about the use of photographs, et cetera, governed in another section?

Mr. Johnson: Two things on that, sir. I guess I have to refer back to a section that's been stood down at the moment, but certainly in both the statement of principles and the bill of rights that has been moved, there's a reference to the right of privacy.

I would say in giving my opinion a few moments ago, I was assuming myself the use of electronic recording devices in an open way, not a surreptitious way. If it was a case of wiretapping, obviously they've got to comply with the Criminal Code. I was envisioning an inspector sitting down with a tape recorder openly in front of the person.

Mr. Jackson: Thank you.

The Chairman: Any further discussion on this amendment which doesn't exist?

Mr. Davis: The question is are the residents informed and do they have the right to say yes or no about having their photos used and to have their conversation recorded, currently?

The Chairman: Currently, under the legislation before we ask for the repass. Mr. Sapsford, perhaps you can tell us?

Mr. Sapsford: I'm not able to point to a specific statutory requirement. Certainly as a matter of practice, the ministry's inspectors would not take photographs of residents nor tape record conversations without their consent.

The Chairman: Perhaps when we get back to the rights of residents or guarding principles, we'll have to be sure there was wording in that area. Since we are not including anything here about taking pictures.

Miss Hart.

Ms. Hart: There would be some problems with the laws of evidence. If the inspectors are gathering evidence for purposes of legal proceedings, they would have real difficulty, I would think, getting them admitted in a court

of law if it were done surreptitiously.

Mr. Jackson: That's not the point. The point is that we're confirming what the current practice is and that's all. What net effect it has isn't the issue. It's what effect it has within the home. And that's been clarified I think.

The Chairman: Mr. Sterling?

Mr. Sterling: Yes. I think Mr. Cooke's point is well taken, on terms of his amendment. You're saying it's not necessary. Can I ask then why (d) is necessary as well? Why is "may examine or test samples of substances to ensure that the regulations are being complied with" necessary?

Mr. Johnson: The reason for that, sir, and the following subsection are that that would be somebody else's property, to examine and test samples of substances, perhaps to, and I'm not sure if you're checking curtains to see if they're fireproof or something. I mean that is the licensee's property. This would give some right to take a sample of something in the home that does not belong to us but rather belongs to the home. It might be a piece of food to take away and to test.

In that sense, we considered that to be necessary.

Mr. Sterling: Is it quite common in other inspection statutes or other regulatory --

Mr. Johnson: I believe it is common where a person is going to take something away to test, yes.

Mr. Sterling: Thank you.

The Chairman: Anything further on Sub (4) or Section (4), rather? The amendment, shall we carry? Carried.

Section (5). I don't think I have any amendments on this. Catch me if I'm incorrect, but I don't think so. (5)(4a), this involves test results. I see none. All those in favour of Section (5) carry, please indicate? (5) carried.

Section (6), I have nothing on it, and this is just a repealing of 17(5). Is this carried? Carried.

Section 15, we have a number of -- so on Section 14, are there any amendments? None, so Section 14 carry? Thank you.

Section 15, we have a number of matters here, and

we'll sort them out in order. I think the first one I have is from Mr. Cooke for 17a(1), the first subamendment that we come across.

Mr. Cooke.

Mr. Cooke: Mr. Chairman, I move that Subsection 17a(1) of the act as set out in Section 15 of bill be amended by inserting after "person" in the first line, "other than a resident". I'm not reading the last portion.

The Chairman: Thank you.

Mr. Cooke: The purpose of this is to simply exempt residents of nursing homes from being forced to report suspected abuse, the reason being the residents, I think, of nursing homes are absolutely the most vulnerable. And many would be very, very fearful to report any abuse.

I think if we have the employees, the visitors, the relatives that are responsible for reporting abuse, I think that we've got a substantial safeguard, and I just don't think that it's necessary to put the residents in this uncomfortable position.

As you'll remember, a number of groups made this representation to us and they wanted us to go the additional step of also exempting relatives of residents. I don't believe that relatives of residents should be exempt, but I do believe that residents should be exempt.

The Chairman: Okay. Mr. Callahan.

Mr. Callahan: I can appreciate your purpose behind striking, I suppose, the word "representations made in that regard," but let's suppose that the only person who can evidence what is happening is a resident. In fact, what could happen in private might very well result in one of the other residents being completely at risk without any, particularly if he or she were mentally incompetent. There would be no evidence. There would be no reporting and then that would continue.

Mr. Cooke: This does not exempt someone from reporting if they want to report. It just doesn't say it's mandatory to report.

As you know, now under the statute it's not mandatory for anyone. We're now putting in place a statute that makes it mandatory for everybody except for residents, but it doesn't prohibit them if they want to report or if they want to, in fact, to testify. I have had some examples in my own riding recently, and I can tell you even without this reporting mechanism, the anguish that the resident who was a witness to what happened went through

was extremely difficult.

If you then impose on them no flexibility whatsoever for somebody who is very frail, perhaps very ill, I think that this type of section could in fact be very physically harming to the resident as well.

Mr. Callahan: It seems to me, if I could, Mr. Chairman, that because of that concern, I can see where that could be a very real concern, that perhaps the nature of the reporting and the nature of the investigation should be that a person, if they're a resident, who reports something, will not have to give evidence of that. I mean, that will simply be the impetus to start the ball rolling in terms of investigating in some other way.

I suppose the clearest thing you can think of in terms of what happens out there in society with tips or this police thing where they -- what is it?

Ms. Hart: Crime Stoppers.

Mr. Callahan: Crime Stoppers, where they tell you if you call in and report it, you won't have to testify, you won't have to appear in court or anything else and the whole purpose behind that is to avoid the ignominy of having to go through testifying and being centered out.

I would think that within the framework of a nursing home, where the society is very much more limited, that's even a greater threat. I wonder if there's some type of approach that might be taken in this act in that regard. And perhaps I might ask counsel, is there any way that we could do that, to eliminate the necessity of any resident having to sort of make themselves known and go public as it were?

Mr. Johnson: Well, I don't think it is practical to build in something because it may be that we can go no further without that person's evidence. I think obviously there's a large measure of discretion in the director when he's investigating these things, and I suspect if he can prove a case without having to call upon a frail resident, he would do so. But I don't think it would be wise to exclude that possibility.

Mr. Callahan: Just if I could, finally, if a complaint were to be made, would it be envisaged that they would have to get in touch with the director of the nursing home or would there be a mechanism through which they could report the complaint in as unobvious a fashion as possible? What would be the mechanism for that?

If they have to tell the nurse there that, you know, they, "I was hit by so and so," or they have to tell the

director, I would think they'd be very reluctant to do that because that's letting the cat out of the bag, as it were.

Mr. Johnson: The theory is that the person would complain directly to the director of nursing homes and not to anybody in the nursing home itself. Obviously, the practice is a little more difficult because the director isn't present in the home.

But I would assume in the normal case of a frail person, they would relay it through a family member.

Mr. Cooke: However, if the family member became aware of it by a resident saying something, then the family member is obliged by this section to report it. So that's covered.

The Chairman: Mr. Sterling has a question.

Mr. Sterling: I see what Mr. Cooke is trying to drive at. That section 17a(1) is a mandatory section, "shall forthwith report the suspicion to the director". And then as we go to the penalty section of the statute, I presume that if a resident, under this action and within the strict context of the law that we're writing today, would be subject to a penalty of not more than \$5,000 per offence.

In other words, you have a ludicrous situation where a resident would be in fear of their, of their health and therefore reluctant to report an incident for fear of retaliation, and also subject to a fine under the strict context of the law.

Now, I know that's out of policy. It is not dreamed that that would never happen, but that that's the kind of a law we seem to be writing today. And I guess that's what drives Mr. Cooke and the groups to the amendment. Am I way off base on that?

Mr. Johnson: No, you're correct the way it is. I guess one might want to look at this like the seatbelt legislation in its early days, where I suspect very, very few charges were ever laid. I think the director would have a considerable discretion in terms of using it.

But on a legal interpretation, you're absolutely right.

Mr. Sterling: Would it be possible, in order to -- you see, I have concerns in excluding the residents. What would happen if you did exclude the resident? Would it be permissive for the resident then to go to the director?

Mr. Johnson: Yes.

Mr. Cooke: Oh, yes.

Mr. Sterling: There would be no problem.

Mr. Johnson: There would be no problem. There would simply be no legal whip on the person.

Mr. Jackson: Does that then set in place a scenario where there are three residents in a room, one of which has inflicted harm on the other without visible signs of that damage and that now the resident who has suffered goes to the third party who was witness and says, "Would you please report that because I don't think they're going to believe me".

Or I could end up with a situation of two opinions against one. The resident says, "I am advised by my advocate in the building that I don't have to say anything".

Is that scenario possible under, with this amendment?

Mr. Johnson: Yes.

Mr. Sterling: What about the second part of the amendment where we're voting on two particular parts? Is there any response to, by the ministry to --

The Chairman: What's that, sir?

Mr. Sterling: I have beliefs --

The Chairman: That was stricken. You spoke to me in private, Mr. Cooke, about why you'd taken that part out.

Mr. Cooke: The concern about leaving it in was that it could in fact result in the police being informed, the information never getting to the director. The way it is now in the law, the director would be informed and obviously if there's a breach of any provincial or federal laws and Criminal Code, then the police would be called in by the director.

I might point out on the first part of the amendment, this is something that all of the groups, the advocacy groups, as well as the Ontario Nursing Home Association supported. If it's left in, I don't think, if there's mandatory reporting for the resident, I don't think it's a disaster. I just think potentially you're putting undue pressure on the residents.

The Chairman: I think Mr. Jackson wanted to ask a

question.

Mr. Jackson: I wanted to determine from Mr. Cooke that if in fact it was his intention at any other time to bring forward an amendment that deals with the concept of reporting to the police?

The Chairman: I understand it is not now --

Mr. Jackson: It's been dropped from the section, but has it also been withdrawn from the party's position?

The Chairman: The onus to report a criminal act would still fall upon the director.

Mr. Jackson: Thank you.

The Chairman: Mr. Davis.

Mr. Davis: I just wanted Mr. Cooke to comment on how one deals with verbal abuse. If the resident isn't involved, how does one report that kind of incident which probably could be more damaging. How do you deal with that?

Mr. Cooke: I'm not sure. This section, basically as I read it -- maybe I'm wrong, but this section deals with, what I interpret to be as physical harm to the resident since it specifically refers to unlawful conduct. I assume that we're aiming at physical harm in this section. If there's mental harm, that would be covered by things like a bill of rights.

The Chairman: Anything further on Mr. Cooke's amendment to Section 15? If not, all those in favour of Mr. Cooke's motion, please indicate. Down. Those opposed.

I have a problem, Mr. Andrewes. Your hand didn't rise. And I wonder if you're in favour or opposed?

Mr. Andrewes: I was in favour.

The Chairman: Thank you. Then the vote carries.

That's 17a(1). I guess I should ask now if 17a(1) will carry as amended? Agreed? Agreed.

Now, I have a motion to 17a(2), and we also have an amendment of Mr. Cooke.

Mr. Cooke: Does the government have one here?

Mr. Callahan: So they both would be taken out by this --

The Chairman: Yes.

Mr. Callahan: So we'll have to adjust this next one accordingly.

The Chairman: Well, we don't in the sense that I call for government motions first.

Okay, so the government's motion will be read by Mr. Reycraft.

Mr. Callahan: He reads so well.

Mr. Reycraft: Mr. Chairman, I move that Subsection 17a(2) of the act as set out in Section 15 of the bill be struck out and the following substituted therefor.

"(2), no person shall dismiss, discipline, penalize, coerce, intimidate, or attempt to coerce or intimidate another person because (a) a report has been made to the director under Subsection (1); (b) the director has been advised of a breach of this act and the regulations, or (c) the director has been advised of any other matter concerning the care of a resident or the operation of a nursing home that the person advising believes ought to be reported to the director unless the other person acts maliciously or without reasonable grounds."

The Chairman: Thank you. Who's going to speak to that? Parliamentary assistant?

Ms. Hart: Yes -- I'm gathering my thoughts here.

The Chairman: While you're gathering your thoughts here, Mr. Reycraft?

Mr. Callahan: He only reads them.

Mr. Jackson: Mr. Chairman, the one change that we're advising, Subsection (c), that's the only change.

The Chairman: Well, yes, she's ready. I'm happy to be able to announce that --

Ms. Hart: I'm ready to refer to Mr. Sapsford.

The Chairman: Mr. Sapsford, the new parliamentary assistant, would you like to explain?

Mr. Sapsford: The basic change in this particular section is to extend the protection of coercion and so on to a second party who has been involved in the reporting to the director. It simply expands the coverage to more than the person who initially does the reporting.

Ms. Hart: If I might add to that, we listened to the groups' concern in this regard and thought it should be responded to. One thing we did not respond to was we included that, that saving, that the person must not act maliciously or without reasonable grounds. Our view in that regard was that even though the object of the section is to encourage people to report, that there should be, in the interest of fairness, there should be some balance on the other side.

The Chairman: Mr. Cooke.

Mr. Cooke: I'd like to move an amendment to the amendment. It simply would eliminate the following "unless the other person acts maliciously or without reasonable grounds". That's, the other part of the motion incorporates my concern as well, but this, I'm very fearful that this is a, this is a major weakness in this section, that if we leave this section, "unless the other person acts maliciously or without reasonable grounds," that the potential for abuse of that is just too substantial.

When one looks at Section (3) of this section, I think we are more than adequately protected when it says "no person shall include in a report to the director under Subsection (1) information the person knows to be false." That clearly makes it illegal to harass a nursing home by making a false report to the director.

There's adequate protection. And in discussing this, even with, I believe, at one point with the minister, he agrees that that provides, affords a substantial protection to the home, that this additional section of "unless the other person acts maliciously or without reasonable grounds," I think, could have a very adverse effect on encouraging people to report.

The other point is that I think in laws like this, we have to, if anything, lean on the side of encouraging people to participate in making reports to the director, and I have, it was pointed out, I think on the first or second day, or when the minister appeared before the committee, it was pointed out that it is quite possible under the section as it is now worded that we could be put in the silly position of the ministry having to act against somebody on this malicious section. And that, the type of, the type of adverse publicity that would result would scare everybody in the province from making a report to the director.

So I say that I think this is an important subamendment, and I know the ministry's concern; I know the nursing homes' concerns, and I think they're adequately protected under Subsection (3) and I hope that the

committee would agree with our subamendment.

The Chairman: You're speaking of the subamendment which removes the words "unless the other person acts maliciously or without reasonable grounds"?

Mr. Reycraft, you had your hand up prior to that. Did you want to speak to that?

Mr. Reycraft: I wanted to speak to the amendment, Mr. Chairman. And I'll wait to do that.

The Chairman: Miss Hart, did you wish to respond to that?

Ms. Hart: No.

The Chairman: Mr. Jackson.

Mr. Jackson: Is he implying the ministry had some sympathy with his beliefs and yet the government didn't include it?

Mr. Cooke: No, I think the point is that amendments are presented to committees and discussions take place as a result of public hearings.

Mr. Jackson: So that's your interpretation but not necessarily shared by the parliamentary assistant.

Ms. Hart: The position of the ministry is that we're going to take a position against the subamendment.

Mr. Jackson: And that is the position of the ministry?

Ms. Hart: Yes.

Mr. Jackson: Thank you.

The Chairman: Mr. Andrewes.

Mr. Andrewes: Well, Mr. Chairman, I'm going to refer to my colleague, Mr. Sterling. But first, I might say that I sense what is being proposed here in the amendment to the amendment is that these people named in this section will be saved harmless from dismissal, discipline, penalties, coercion, intimidation and attempt to coerce or intimidate, and I agree, perhaps, that there is some interpretation in the terms "act maliciously" and "without reasonable grounds," but I cannot see that we can save and free from any of the penalties that might befall them as a result of that kind of activity.

The Chairman: We have Mr. Callahan and then Mr.

Sterling.

Mr. Callahan: I was just going to say, Mr. Chairman, that that is absolutely essential, because let's take the scenario where a social worker or a nurse on the floor receives word from Mrs. X. Mrs. X may be somebody who relates information quite frequently to this nurse, and yet it's a report of such a significant nature that perhaps on this occasion, Mrs. X is telling the truth, but --

Mr. Cooke, you can sit and shake your head. I sit and listen to your statements.

Mr. Cooke: I'm not saying anything.

The Chairman: I might say, Mr. Callahan, that the shaking of the head is not an interjection.

Mr. Callahan: But the, you know, if you had a situation like that, it might very well be that that nurse or that social worker, because of Mrs. X's previous history may be really in a quandry as to whether or not they should report that to the director. And the net result might be that this woman, Mrs. X, who is now this time telling the truth about the facts, not embellishing them, that either she or some other innocent party might wind up in deep trouble.

And that's why I think it's important to provide this type of protection to those people. You know, is it reasonable to accept Mrs. X, who has embellished on stories before, on this particular occasion. And that would be a question of fact as to whether that was the case or not, but certainly I wouldn't want to inhibit anybody from reporting anything to the director and let the director at least get started and make his own interpretation as to whether it's a matter of urgency or not.

But if you take that out, I suggest to you that you will in fact put people in that scenario and perhaps a dozen other scenarios that might be equally appropriate.

The Chairman: Mr. Sterling.

Mr. Sterling: I guess I'm sort of half way between the government amendment and the amendment which, the subamendment which Mr. Cooke put forth. Maybe counsel could straighten this up, but the trouble is that the section is written to achieve one goal and then you're putting a caveat on it, which I think turns it around to perhaps a ludicrous conclusion.

Say an employee acts without reasonable grounds and goes to the director. Does this section then say that the employer has a right to intimidate or coerce that employee?

Mr. Johnson: In my view, it doesn't include a right to do that. It simply does not provide a protection. If the person has acted maliciously or without reasonable grounds, the section confers a protection, and in effect says that protection is not available if the person acted maliciously, or without reasonable grounds.

Mr. Sterling: You see, I'm taking the two ends of the spectrum in terms of being a part of it. I would prefer that the section be done in, I guess, in two sections.

First of all, you have a section which says "no person shall dismiss, discipline or penalize, another person because a, b, c, unless the person acts maliciously or without reasonable grounds," and the next section would say "no person shall intimidate or attempt to coerce or intimidate another person, a, b, c," and I would then agree with the subamendment of Mr. Cooke.

I don't know if we can do that to save time.

The Chairman: Mr. Johnson or Mr. Campbell. Do you need a while before you respond or --

Mr. Johnson: I would like to be very clear on how you divide it again? Would you mind repeating?

Mr. Sterling: What I'm saying is that the sanctions against a person who reports without reason or maliciously are too wide in the open part of that subsection.

What you're almost saying to the employer is, "Look if this guy doesn't act reasonably in what he's doing, you can go and intimidate or harass this employee" or whoever. That's the way you read it in reverse, and that's the problem I have with that particular subsection in the government amendment the way it is.

On the other hand, I think it's reasonable that an employer should have a right to discipline somebody who is acting without reason and maliciously.

Mr. Johnson: I can appreciate how you're reading it. I think -- and that's a fair reading in a sense, but the reality is that it is not legally an invitation to dismiss, discipline or penalize.

Mr. Cooke: But there's no protection.

Mr. Johnson: What, in effect what this does is create a new thing of protection but limited. In these cases where it doesn't apply, i.e. malicious, without

reasonable grounds, the protection is simply not there, that we added. But any other protection in the law would be there, for example, labour law, criminal law, whatever.

Mr. Cooke: So who makes the determination if someone has acted maliciously under this section?

Mr. Johnson: Well, presumably a person who is going to act one way or another, it would bring them under this section.

Mr. Cooke: But who makes the determination? The employer -- I can look at the Country Place situation a couple of years ago when three employees were fired. Luckily, they had a union and they were able to go to arbitration and have their representation from the union. There are many nursing homes that are not unionized and they don't have the right to access arbitration.

So who under this section would make the determination whether, say, an employee is acting maliciously?

Mr. Johnson: First of all, those protections you mentioned remain in place.

Mr. Cooke: Of course they do, but I'm talking, I'm thinking primarily, quite frankly, of the nonunion employee. What remedy is there for the nonunion employee?

Mr. Johnson: You're assuming a situation where the nursing home owner has fired, for example --

Mr. Cooke: Correct.

Mr. Johnson: -- a nonunion employee?

Mr. Cooke: Correct.

Mr. Johnson: And his belief, the owner, is that the person acted maliciously or without reasonable grounds?

Mr. Cooke: Correct.

Mr. Johnson: Well then, the person who had been fired, of course, would be alleging that wasn't the case, there were reasonable grounds and would therefore, I presume, want to prosecute the employer.

Mr. Cooke: So the only access, the only opportunity for the employee, under those circumstances, would be to sue the employer for unfair dismissal?

Mr. Johnson: Yes.

Mr. Cooke: So instead of -- I mean, what we've done in this section, if you look at Subsection 3, you've put the onus on the ministry to prove that someone has violated the act by knowingly making a false statement, and they're clearly the people under those circumstances that would make that determination under the Nursing Home Act.

Under Section (2), we let the nursing home owner make that determination and the remedy is up to the employee to sue the owner for unfair dismissal, at great cost, at great time, and perhaps in the end there may be a settlement in the end, there might not be a settlement. But there is no method for a nonunion employee other than to go through that course of action, whereas under Subsection (3), there's a ministry that would deal with the enforcement of that section.

The Chairman: Mr. Johnson wishes to respond.

Mr. Johnson: If I may add -- I may have cut myself off too fast. Obviously, the director has the same power under (2) to prosecute the employer for violating the section.

Mr. Cooke: Oh, of course, but the reality is that that's not normally what is going to happen. What is going to happen, as was the case at Country Place, where the employees were fired, they had to take their own action.

Mr. Cordiano: Can I have a supplementary?

The Chairman: You want a supplementary? I have five on the list.

Mr. Cordiano: I'll have a supplementary on this very issue.

The Chairman: I think when it's one you all have one.

Mr. Cordiano: I'm very reasonable, Mr. Chairman. Would the employer, if we remove this section as is considered by the amendment, if we remove that last sentence, "unless the other person acts maliciously or without reasonable grounds," would the employer be able to act to dismiss an employee?

Mr. Johnson: They would have to show that they weren't --

Mr. Cordiano: Well, that would --

The Chairman: I think what Mr. Cordiano is saying is if you left out the line that Mr. Cooke is suggesting be left out, and someone thought that an employee was acting

maliciously or without reason, would the employer still have the right to take action? I believe that's question.

Mr. Cordiano: That's what I'm saying.

Mr. Johnson: I would say then that he can't fire him for that reason. He may have another reason, but he can't fire him for that reason.

Mr. Cordiano: So without that line, without the last statement, "acting maliciously or without reasonable grounds," then the employer would have no other recourse to fire that employee if in fact he had acted maliciously and without reasonable grounds? That's what you're saying, just to be clear?

Mr. Johnson: That's correct. That would -- yes.

Mr. Cordiano: So in effect you have to have that last statement in there in order for the employer to act if an employee has acted maliciously?

Mr. Cooke: Who makes the decision?

Mr. Cordiano: I'm not asking that. I'm trying to determine --

Mr. Cooke: That's pretty much the issue.

Mr. Cordiano: I'm talking about -- well, it's initiated by the employer in any case. If you're going to coerce and discipline an employee, I would assume he's going to be disciplined by and on behalf of the employer.

The Chairman: Can I ask a question if I might for the ministry officials? Bill 70, which has been referred to in the past, because this whole debate took place a number of years ago around the person's right to refuse being done frivolously, et cetera, and it was decided in the legislature at that time not to put those words in because, in fact, it would stop the reporting of incidents and stop people from protecting themselves in the workplace.

I may be wrong on this, but I thought there had been cases where, in fact, employers have still taken their employees to court and dismissed them, laid them off, et cetera, because they felt that they'd done it maliciously.

Am I wrong in that? I believe that that has taken place. People who refused to work in a work station because they felt it their right to protect their health and safety have still been dismissed, as far as I know, under the other act.

And that would be contrary to, in direct indication, to what you just --

Mr. Campbell: Perhaps we should look into it over lunch.

Mr. Jackson: Mr. Chairman, I don't think it's appropriate since very few of us are paying attention to the chair at the moment --

The Chairman: If we made a determination based on that --

Mr. Jackson: -- to question the legal counsel because they were involved in conversation about the previous question, which is understandable. I'm just stating that we've raised more questions than we've answered on this section, and I have several questions to raise.

I wonder if we're able now, given the status of this clause, if we're able to proceed with it, or if there are sufficient outstanding questions that we stand down?

The Chairman: We have least three people who still wish to speak, including yourself.

Mr. Jackson: I was trying to compound the situation.

The Chairman: Good. I was hoping you would. Now, is there matters outstanding that -- obviously, discussion was taking place here which was not related to anything that went on before but in fact was an intervention by Mr. Cooke privately, and then my question, which was being directed to Mr. Campbell because Mr. Johnson was busy, around the ministry of what's happened under the Health and Safety legislation where specifically this kind of line was taken out and where as I'm aware, workers have been charged, have been laid off, have been dismissed, have been fired, for exercising what was presumed to be their right under the act because it was felt to be malicious.

Mr. Campbell: The answer was I didn't know the answer and we'd try to find out over lunch.

The Chairman: Do you have a response to Mr. Cordiano's question? Miss Hart.

Ms. Hart: If we take out that last part of the section about maliciously and without reasonable grounds, you are quite correct, that nobody can be fired, even if they make a malicious or an unreasonable complaint under this section.

Mr. Sterling: Could I ask again how that --

The Chairman: Could I ask you again to look into what's happening under the Minister of Labour's act. That is not the case.

Mr. Cordiano: Mr. Chairman, what you were saying is that that section was made in the other act, the Labour Relations Act, and employees were fired, regardless?

The Chairman: Yes, because the Labour Relations Act handles that, an employer has the right to undertake that through the OLRB. I may be totally wrong on this, but I don't think I am.

Now, I have Mr. Jackson.

Mr. Jackson: Mr. Sterling has a supplementary.

Mr. Sterling: It's along the same lines. What is the remedy if we take this particular matter out, from an employee or anybody, what is the remedy that a licensee would have against somebody who is making malicious or charges which were unreasonable? Would they have a right of action in civil court?

Mr. Johnson: Well, taken a step at a time. If we take this "unless" provision out, then as I think has already being said, then we have an absolute bar to firing for that ground. There may be a right to prosecute that employee under the next subsection, Subsection (3), "no person shall include in the report to the director information the person knows to be false". There may be a right to prosecute the employee under that.

Mr. Sterling: But would there be a right to sue that person for --

Mr. Cooke: Libel or whatever.

Mr. Johnson: Someone may have a civil action, I guess, depending upon the circumstances.

Mr. Sterling: I guess what we're trying to do is strike a balance between protecting the employer and protecting the employee in terms of what they say to the director. And I guess what I'd like to see is some right of the employer against an employee who, where a person is making unreasonable statements about, and, you know, it's splashed all over the newspaper or whatever, and that it doesn't matter, you know, really what happens after that. The damage is done.

There has to be a caution given to whoever is making

the statements that they must have some reasonable evidence to back up what they're saying.

Mr. Allen: Mr. Jackson.

Mr. Jackson: I would like to try this from a new angle. Has the minister given any consideration to a provision in the act which would set a penalty or a charge for a person who files a malicious complaint?

Ms. Hart: It would fall under the penalty section as it is. The difficulty with it is that that may not be enough of a remedy for the employer. He may -- I mean, if there is a malicious complaint, there may be reasonable grounds to fire that employee. He won't have that remedy but he may have a prosecution.

Mr. Jackson: I'm not having as much difficulty with an employer's right to fire for persistent and malicious tampering with the complaints process. That's what it amounts to. I'm having difficulty with words like coerce and intimidate. Those are just ugly words, period.

And so I guess my question was, had the ministry given any consideration to a penalty system as a form of deterrent for the filing? I mean, if we back this whole clause up, the purpose of it is not a means by which an employer can eliminate employees. The purpose is to limit where possible persistent and malicious and frivolous complaints, because that detracts from the effectiveness of the overall complaints review process, aside from giving the operator a bad image and all those things that go with it.

So you haven't given consideration to that and that is, in my estimation, is what the purpose of the clause is to do. It's not to bog down the process with frivolous complaints, to take an agenda, which is the residents' agenda. It may be the union's agenda or it may be the ownership versus nonownership agenda, and that has nothing to do with the delivery of quality care in Ontario.

And that is really what we're trying to get a handle on and that satisfies the initial concern raised by my colleague, Mr. Sterling, with respect to using that kind of language.

Ms. Hart: Well, the ministry has --

Mr. Jackson: I should say in no way do I support the subamendment of the NDP because I feel that the open-ended nature of it is impossible to live with as well. I'm still trying to determine something that may be, achieve somewhat the same results, but avoids words like "coercion" and "intimidating". That's what I'm suggesting.

Ms. Hart: Are you suggesting that those words come out?

Mr. Jackson: No, no.

Ms. Hart: I'm not clear. Or do you want a separate penalty system with them in?

Mr. Jackson: No. I asked if the ministry had investigated or had considered such a plan, and you're indicating no and for the reasons that in no way did it provide an employer with an opportunity to dismiss.

Ms. Hart: No, that's not what I said.

Mr. Jackson: Oh, okay.

Ms. Hart: In the amendment as proposed, there is a right to prosecution and it falls under the general penalty section.

Mr. Jackson: And the onus is on the, as written, the onus in that clause is what, for the licensee or the ministry?

Ms. Hart: Onus to do what?

Mr. Jackson: To prosecute for purpose.

Ms. Hart: No. But if the act is being, is not being complied with, then it's the responsibility of the ministry to prosecute, not the employer.

Mr. Jackson: All right then. Is it your interpretation that if someone is persistently putting in frivolous complaints against the system, that is not under this act an offence which your ministry would pursue?

Ms. Hart: No, I didn't say that.

Mr. Jackson: No, I'm asking.

Ms. Hart: I don't -- I would think that if there were evidence of noncompliance then the ministry would be obliged.

Mr. Jackson: That's a different issue.

The Chairman: That's a different issue. We've passed outside of the discussions strictly on the merits of this amendment.

Mr. Jackson: All right. I'll leave it for now, Mr. Chairman.

The Chairman: Mr. Reycraft is next on my list on the amendment to the amendment. That is the amendment on "unless the other person acts maliciously or without reasonable grounds" being stricken.

Mr. Reycraft: I indicated, Mr. Chairman, I wished to speak to the amendment.

The Chairman: You had your hand up again afterwards? I guess you didn't.

Mr. Cooke: He was just waving.

The Chairman: Mr. Cooke.

Mr. Cooke: Mr. Chairman, I have a suggestion that I think would satisfy in particular Mr. Jackson. I'll wait, but I want Mr. Jackson to hear my suggestion because it might satisfy his concern.

If we accepted my amendment and then if we added under Subsection (3) a section, so that the whole Subsection (3) would say, "No person shall include in a report to the director under Subsection (1) information the person knows to be false, malicious or without reasonable grounds".

If we had that in Subsection (3), that would mean that anyone that did that would be subject to penalties for the first offence of 5,000 and for any subsequent offence of 10,000. It would mean that the enforcement would then be with the Ministry of Health, but it would still be clearly illegal and would be subject to the fines' provision of this legislation.

The Chairman: Speaking to the "unless the other person acts maliciously or without reasonable grounds" being stricken? Anything further on that? Miss Hart?

Ms. Hart: The difficulty I have with that is the one that was already stated. If you take, without "maliciously or without reasonable grounds" out of the first subsection, then you have effectively barred dismissal for any reason by the employer, and I have some trouble with that.

Mr. Cooke: But on the other hand, you said that it's illegal, it will be enforced by the ministry, but that it's eliminated as a tool for nursing homes who may, as they did in the Country Place situation, and your people know what happened at the Country Place a few years ago, it does happen, that it would no longer be a tool that could be used by employers, either.

The third party involved would become the Ministry of Health, and they would have to enforce that section.

My concern, obviously, is that if you leave it the way it is now, it becomes a mechanism to discourage reporting. If you take it the way that I'm suggesting and it be covered in Subsection (3), it doesn't become a tool where harassment can be used by the employer. It becomes a mechanism whereby the ministry can enforce that section.

And a substantial, obviously, there's a substantial disincentive to the employee or to anyone else to making those reports. I mean, the other thing is that we're talking primarily about employees. What about relatives of nursing homes? If a relative makes a report under this section that the, that turns out to be malicious or without reasonable grounds, what you're basically saying is that it's then okay, or it's not illegal to harass the resident.

We should make sure that it's illegal to harass anyone as a result of this section, but it's illegal to make a report to the director that is knowingly false, malicious, or without reasonable grounds.

The Chairman: Miss Hart.

Ms. Hart: I can't follow your argument that you've just made that makes it legal to harass a relative.

Mr. Cooke: A resident. The only time that it's illegal to harass a resident or to coerce, is if the report is considered to be legit. If in fact the nursing home operator considers it to be malicious or without reasonable grounds, this section doesn't apply.

Ms. Hart: Well, I take a different view on that. I think that this section doesn't permit harassment, coercion. All of those things are covered under Criminal Law, for example, and my concern is that if you just leave it to the prosecution by the ministry, you've got an employee -- and I'm taking a worst case scenario, of course. We're trying to strike a balance here. You've got an employee who, for whatever wrong reasons, maliciously, without reasonable grounds, is making reports against a nursing home, and that nursing home has to continue that employee working for it during the course of the prosecution, which is obviously going to take more than a few days.

And that's my difficulty. I understand what you're saying about encouraging the reporting, but I'm just not persuaded that the balance should be struck down.

Mr. Cooke: What would you rather have, the circumstance which you outlined or the circumstance at

Country Place, where back in 1984, three staff members were fired because they made reports to the ministry and the owner decided that that was malicious? That's exactly what happened at Country Place. Would you not rather err on the side of encouraging reports and looking at those worst case scenarios? Isn't that the purpose of this act?

Ms. Hart: Well, we're in the exercise of trying to strike a balance.

The Chairman: Mr. Allen.

Mr. Allen: Mr. Chairman, I would like to just speak on behalf of the proposal that Mr. Cooke has just made, with an alternative to inserting these words in the next immediate subsection of that section.

It really seems to me that if you go to the trouble on the one hand to try to protect those who are making such reports and to protect them from dismissal, penalization, coercion, intimidation, et cetera, and attempts to do so, but then on the other hand, you leave it entirely in the eyes of the employer, the licensee, as to whether malice has been involved or there has not been reason or reasonable grounds, then as far as I can see, you simply nullified all of the previous parts of that first section. Because you opened a barn door for opinion on the licensee's part as to what this person's motives have been, whether he has acted on reasonable grounds.

And, of course, one would assume that a reasonable licensee might well judge properly in those respects, that there was not malice or that there was reasonable grounds. But one can't assume that to be the circumstances. One can't assume that to be the situation in an employer/employee relationship. But this begs that, obviously for fairness and justice, that there be a third party involvement in determination of malice or in determination of what reasonable grounds was or whether unreasonable grounds exist.

It would seem to me, therefore, that it made sense, to follow Mr. Cooke's course and put both considerations into Subsection (3), which has to do with the important question as to whether information, the information is accurate in the first place, and that surely is the most important thing.

One can imagine a situation in which -- one can imagine the situation --

The Chairman: There is a lot of discussion around us and it's very hard for the Chair and the parliamentary assistant to hear what the member has said.

Mr. Allen: One can imagine a situation in which the information that's conveyed is accurate but it also may be accompanied by malice. So a person bearing true information may in fact act on the grounds of malice, that the employer identifies and accurately identifies, is able to dismiss on the basis of a straightforward report that was available to the ministry.

But I do see problems in that section. It seems to nullify all the previous portion of the section and all the purpose it exists for. I think that it makes a great deal of sense to do what Mr. Cooke suggests and lodge that terminology under Subsection (3).

The Chairman: Miss Hart.

Ms. Hart: I see some merit in the splitting out of dismissing and discipline versus penalize and coercion, intimidation.

Perhaps what I could suggest, if we have either a recess or we break early, that we might be able to come to some conclusion of this.

The Chairman: We have to stand down the section is what you're saying?

Ms. Hart: Yes.

The Chairman: Is there agreement that we will stand down Section 17a(2)?

Mr. Sterling: Can I just, before you do that, I'll put forward the amendment which our caucus will --

The Chairman: It will have to be an amendment to the deletion, which has already been moved by Mr. Cooke.

Mr. Sterling: We would deal with those particular amendments first then, and then put forward another amendment, and I think it's important --

The Chairman: You'd like to give notice of what you'd like to do?

Mr. Sterling: Yes.

The Chairman: Why don't you do that?

Mr. Sterling: We will recommend that Section 17a(2) be amended to delete "coerce, intimidate or attempt to coerce or intimidate," those words, and then we will support that section as it now stands.

Mr. Cooke: Wouldn't the effect of that be that --

The Chairman: It isn't on the floor so we can't have discussion.

Mr. Sterling: Then we will move Section (2(a), "no person shall coerce, intimidate or attempt to coerce or intimidate another person because the other person has done something described in clauses (2)(a), (b), or (c)." And that will not have the "unless the other person acts maliciously or without reasonable grounds" attached to it.

The Chairman: Now, do we all have some idea where the various players are on all of this? We will stand this down until this afternoon at least and we will continue along with other subsections of this section and then revert to this when you ask me to.

So does this mean that you would like all of 17a stood down and just go on to 17b? So we will now move to 17b, for which I do not have -- I do have an amendment. I have a government motion. And, therefore, we will listen to the dulciet tones of Mr. Reycraft.

Mr. Reycraft: Mr. Chairman, I move that Section 17b of the act as set out in Section 15 of the bill be amended by adding thereto the following subsections.

"(2), the licensee shall include in the complaint forwarded under Subsection (1), a statement of reply, setting out (a) what the licensee has done to remedy the complaint, (b) what the licensee proposes to do to remedy the complaint and at what time the licensee proposes to do it, or (c) that the licensee believes the complaint is unfounded and the reasons for the belief.

(3), the director shall cause any complaint received under Subsection (1) to be investigated forthwith after receiving it".

The Chairman: Thank you, Mr. Reycraft. It's in order. Miss Hart wishes to speak.

Ms. Hart: This was a suggestion raised by the groups who appeared before us and we thought that it made a lot of sense, so we acted accordingly.

The Chairman: Thank you. Any discussion on Mr. Reycraft's motion? This is Section 15, Section 17b of the act.

Mr. Jackson.

Mr. Jackson: Mr. Chairman, could the government just advise me to what extent the residents have been notified of the complaint at the point at which the

licensee is responding?

I want to fix this recommendation in the context of who knows that there's been a complaint filed? That helps me better understand something here.

Mr. Johnson: At this point, sir, the licensee has received a complaint, and our requirements in the bill to him is to forward that forthwith to the director. So presumably at that point, if any notification has been given to the other people in the home, that's strictly up to the licensee. There's no obligation to do so at that point.

Mr. Jackson: So that the residents' council or whomever, whatever that animal is, is going to be, they're not required to be notified that a complaint has been filed?

Mr. Johnson: At this point, no.

Mr. Jackson: The residents may not be aware that complaint has been filed?

Mr. Johnson: That's possible, yes.

Mr. Jackson: And nowhere does it suggest that the licensee should make known to those groups his response?

Mr. Johnson: Not in this section.

Mr. Jackson: That's not envisaged by the government?

Mr. Johnson: It's not envisaged as a requirement.

Mr. Jackson: Now, if I can use a case and then ask what the government sees as the purpose of this, is it simply to -- well, what is the purpose of it? I understand what the parliamentary assistant has stated was that it was a good idea to just submit it by one or two deponents. What value then do you see it having for the ministry? What is the purpose of getting that?

Ms. Hart: In fact, it speeds up the process. This is what happens in any event, and Mr. Sapsford can speak to that. But rather than waiting for the ministry to receive the complaint and then get back to the licensee to find out, to investigate it, essentially, it just, it telescopes the procedure.

Mr. Jackson: If I could focus in on (b) then, it says "what the licensee proposes to do to remedy the complaint," we heard many cases from several groups before this committee who made reference to, well, if I had

additional staffing or given the resources that are available, we are limited by that because that individual requires more than two and a half hours of supervision.

What impact is that going to have if all the reports coming in state that given the current ministry restraints on funding we're unable to provide the staff which would be beneficial in resolving this problem? Now, what have we achieved by that?

Ms. Hart: That's part of what the licensee is going to put forward to the ministry.

Mr. Jackson: That's why -- okay, now I want to go back to why I feel that that's important that it become public in some way, that somebody other than just the minister and the licensee and director, has an understanding of what's going on.

And I'm just trying to -- okay, so it speeds up the process, but we're going to use Canada Post, presumably, so that may not be achieved.

Mr. Callahan: That's a criticism of your counterparts in Ottawa.

Mr. Jackson: Well, they can't do any better than the predecessor government, so --

Ms. Hart: Why don't I ask Mr. Sapsford to spell out what happens in the ordinary course.

Mr. Sapsford: The ministry currently receives a great number of complaints from individuals or families or external people. What this contemplates is that in addition to all of those complaints that we receive routinely, that any complaints that are perhaps first forwarded to the licensee, that the ministry would become immediately aware of them and some report from the licensee on how the home intends to deal with complaint.

Where the ministry gets any complaint, we always investigate, and so the intention of Part (2) was to give the minister some sense of whether the complaint had been resolved by the nursing home. The complaint could be anything from the specific care requirements to "I didn't get my pill in time" or it could be any number of complaints, some of which will be inevitably solved by the licensee, even before the complaint reaches the director.

So the intention was to give the ministry more information on what the complaint is and what action the licensee or the home had taken to resolve the problem, prior to the ministry automatically sending in --

Mr. Jackson: I understand that. Can we now put this clause in the context of a bill of rights? Now, we have a complaint which isn't that "my bed wasn't made" or that it was, the food was cold or whatever. We're now going to the level where my rights were violated.

Now, I'm not a lawyer, but now we've got a legal rights issue. And now we're asking, is it your intention then to have the licensee respond as to whether or not a resident's legal rights within the bill have been tampered with? Or not been upheld? And now we're saying "What have you done to comply with that?" If they've been broken, they've been broken and they may be damaged. But how do you remedy that?

I'm trying to put this in the context of a bill and what the legal rights are and that the licensee has to then in turn respond in legal form.

The Chairman: We can flag those charges but at the moment we don't have the bill of rights before us.

Mr. Jackson: But it is germane to this section.

The Chairman: Well, it would be, but --

Mr. Jackson: Do we need a certain legal -- I mean, have you consulted with the ONHA, for example, if a lawyer would be required in order to respond where matters of a legal nature have been posed by the ministry and for the licensee's own legal protection, and/or staff protection, then a lawyer must be required in order to comply with these points raised?

I just need to get a feel for that. I was working on the presumption that the bill of rights holds true, and that's clearly different from a set of stated principles as proposed by the government.

Ms. Hart: If I might understand it, I might respond to what you're saying. This proposed amendment deals with complaints, not with -- it's not set out as breaches of rights. It's not any different from what happens now in the sense that the, the director or inspector go into the home if there's been a complaint and make inquiries about what happened and what remedy is going to be given.

I'm failing to understand how this is different.

Mr. Jackson: My point is that now, under the act, it is proposed by your government that certain principles be set out, that a certain, that certain expectations can be had by the residents of a nursing home, and that complaints generally flow because those promises or

expectations are not met and they feel in some way harmed or suffered as a result of that.

Now, when that is in the form of a complaint, based on what the government says you should be doing, that's one thing, but when that complaint, it takes on the legal right of citizens to have a certain level of care or for that to have a certain type of meal or to have, and there's a list, there's plenty that Mr. Cooke has provided, an extensive list of these rights, now the complaints are generally all, or most of them to flow from that list of rights.

So now we've got a legal question to the ministry of complaints, my rights have been violated. In my view, that's a legal question. Maybe, it has other implications, but I see that as a legal question.

Ms. Hart: Well, not --

Mr. Jackson: So now, are we asking the licensee, for their own protection or the protection of a staff, where a staff person is involved with limiting the rights of a resident, do they require a legal response? To what effect would the responses -- is that, can that be subpoenaed in a court if there's litigation as a result? Will it be evidence when their license is being revoked? I mean, what --

Ms. Hart: As it can right now. As their response right now is admissible in court.

Mr. Jackson: Maybe this is, maybe one of the lawyers would like to venture forward for this and not the parliamentary assistant. But I think the --

The Chairman: Mr. Johnson.

Mr. Jackson: First of all, Mr. Johnson, do you understand the question I'm trying to raise?

Mr. Johnson: I think I do. And I hope the -- I hope I'm answering it the right way. Cut me off if I'm not.

I guess in a way, I don't see that it matters whether there's a bill of rights in position or not for purposes of your question. I mean, we are going to get a range of complaints that will range from, "I didn't get supper last night," as opposed to maybe in terms of the bill of rights, "I am not getting due care and attention" or whatever.

I'm not sure it really matters. This is just another device to ensure that the director receives notification of any complaints concerning the home and I

guess we see this as an aid, but merely an aid. This obligation will remain to inspect and investigate this complaint. It may assist him in his dealings with the licensee, to know that the licensee has (a) already corrected the matter, (b) has a plan to correct it, or (c) disagrees that there's a problem and thinks that the complaint is false.

Mr. Jackson: I understand the process. I have no difficulty understanding how this process as set out in the motion would work. What I'm trying to understand is its legal effect on the licensee or employee of the licensee, being a staff member, where your rights, you have a contract for service, and I must advise that I'm going to be recommending an amendment to make the ministry a cosignator to that agreement, and I wish to place in context the implications of one of the parties to the agreement asking the other party to say "Are you, we do have a letter on file, a complaint that someone's rights have been violated," not a principle that has not been achieved or that that is a frivolous complaint. This is a right.

The Chairman: I sense, if I might, that you're suggesting that if this is to go into place, then more is needed, and if that's the case, then I'll be anticipating a motion on it. But it doesn't have to be within this section. It could be, I presume that Section 17 is going to be open for some time, given that there's a lot of meat in the section for us to discuss.

Therefore, I would think that as we go through, that if you have a concern, for instance, for dealing with the section on a bill of rights or guideline, guiding principles, whichever that turns out to be, before that should be passed, that we should not close off Section 17 because we think there might be some implications for that. I'd be happy to take that into consideration.

But in terms of the actual motion that we have before us, I think you're talking about a further step, which would be a further subsection here or somewhere else that you might want to place it. And I think what you've basically done is flagged your interests for that, and I will try not to close off any section until you say that you're sure that your concern has been dealt with.

Mr. Jackson: Thank you.

The Chairman: Is there more on Mr. Reycraft's motion on Section 15, 17b?

Mr. Davis: Mr. Chairman, I appreciate that, and that's exactly what you did with Bill 30. But if the bill of rights is accepted, then it does have implications in

the section and I certainly understood what Mr. Jackson was saying.

I would like to ask a question. I understood from a legal point, that they said the reason they included this section is to ensure that the director is informed that a complaint has been made. Am I correct? And that's the only reason.

Mr. Johnson: Well, as part of the context, if the director or administrator is active in enforcing it. See, in 17a(1), we set up the provision where people must report complaints. Another avenue in which complaints arise are directly to the licensee. We want to make sure that those get to the director as well.

Mr. Davis: I understand. Now, if I move to Section (3), it says "director shall cause a complaint received in Subsection (1) to be investigated forthwith after receipt."

What that tells me then is that -- I'm an owner and somebody complains to me that they have cold food. I relay that off to the director, and he would investigate that. Correct?

Mr. Johnson: He would then investigate into those allegations, yes.

Mr. Davis: Why then, as a licensee, must I indicate to you at that point what I propose to do about it because it wouldn't be investigated anyhow?

Mr. Johnson: Because it would simplify the investigation. It may be that it's a complaint that "I had a cold dinner last night" and the licensee's explanation is that "there was a problem with the heating last night or something and I've done this, that and the next thing and it won't happen again". And the director may or may not be satisfied with that, based upon his experience.

Mr. Davis: So he may not necessarily send out an investigator to look into the complaint?

Mr. Johnson: He must satisfy himself. I guess the degree, the amount of effort he has to go through to satisfy himself may, not must, but may possibly be reduced if the licensee reports what he's done or can do about it. It may minimize the effort involved.

Mr. Davis: What I heard you say is that the director then has the jurisdiction to decide whether he'll send an investigator out to investigate that complaint or not. So if I were to say -- we'll use cold food -- that the heating system broke down, that's why there was cold

food, then the director would have the determination of saying, "Okay, that's not enough to send an investigator in"?

Mr. Johnson: Conceivably, and that may depend on his own experience with the particular licensee, the home, et cetera. He may in most cases decide "I had better send somebody out to check".

Mr. Davis: What I'm getting at is that you've now given the director, as I read this, "a director shall cause a complaint under Subsection (1) to be investigated," I would assume, to me, that an investigator has to go out. But what you're saying to me is, "Well, he does or doesn't have to".

Mr. Johnson: I would say as a matter of legal interpretation that the director being obliged to investigate is not the same as an inspector being obliged to go into that building. But I think what it means is that the director must satisfy himself and I think 99 times out of 100, the only way he's going to be able to do that is to send somebody out. There is a legal difference.

Mr. Davis: The second question I have is I'm having trouble understanding why as the licensee, I have to write you and tell you how I'm going to remedy the complaint in respect to it's a nursing complaint which costs me more money, which I don't have. I mean how does that help you expediate the concern?

Let's say that the concern raised is one which can only be resolved if I have additional staff and presently the financial structure that the government flows through to me, it's not sufficient for me to do that.

Ms. Hart: If I might respond to that. The object of the amendment is to get information to the director. If -- it doesn't mean that the information may necessarily be helpful. But at least that's information the director then has, that this is the reason for the problem.

The Chairman: Well, we certainly have moved away from the speed we were moving at yesterday.

Mr. Davis: I almost find this double reporting. I'm not sure that I see the reality. That's my problem. If I understood what your colleagues have said, the director 99 percent of the time is going to send an investigator out. Rather than, it's like a make-work project, which I notice is something that happens in government.

You're going to have a complaint registered by the resident at some point in a given period of time. Well,

that's what the act says. That's what the act says. Chances are it's going to be a duplication. That person is going to be reporting to the licensee and the person is also going to report to the director. It comes down, it may not come the same day, but it should come, as I understand it, at least at some time frame.

In 99 percent of the cases, the inspector is going to come out and talk to me and say "Look, we got your letter, Mr. Davis, and we agree that the heat was out that day, thank you very much". On your proposal, with the licence you send out, which is what I think you're going to do anyhow, so why can't the licensee solve the problem? I just see us making all kinds of work for people.

The Chairman: Mr. Callahan perhaps is the last speaker before lunch.

Mr. Callahan: I just want to ask a very quick question. 17b uses the word "written complaint". Does that mean that if it's not in writing, that this process doesn't take place?

Mr. Johnson: That's correct, sir.

Mr. Callahan: Where, in other words, if a, if an occupant of a nursing home complains to the licensee and doesn't put it in writing, he's got no obligation there to report it under that section. He'd have to report it, I suppose -- well, maybe under 17a if it fell within one of those categories, but let's say it was something as simple as the bed not being made properly or whatever.

Does it have to be in writing? Is that the intent?

Mr. Johnson: Your interpretation is correct, that 17b must be in writing. It doesn't preclude verbal complaints being passed on, but I suppose it allows for a level of seriousness. I mean, I may well complain verbally that my supper was cold tonight and receive a personal explanation and be done with it.

Mr. Callahan: Okay.

The Chairman: Any further discussion on Mr. Reyecraft's amendment?

Mr. Jackson: The word written, where does it say written in there?

The Chairman: It's in the present bill, 17b. It adds a new subsection to that.

Any further discussion? Okay. All those in favour of Mr. Reyecraft's amendment, please indicate? Down. Those

opposed? Motion is carried.

Mr. Cooke: Same old game.

Mr. Callahan: Actually, it was a slight variation there.

The Chairman: Section 17b is amended, carry?
Carry.

We adjourn until 2 o'clock, when all revitalized and with the speed of yesterday, we will return.

(The committee adjourned at 12:05 p.m.)

A2DN
XC12
-578

S-82



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

THURSDAY, MARCH 5, 1987

Afternoon Sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Epp, H. A. (Waterloo North L) for Mr. Reycraft

Sterling, N. W. (Carleton-Grenville PC) for Mr. Baetz

Also taking part:

Ramsay, D. (Timiskaming L)

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Campbell, M., Counsel, Legal Services Branch

Sapsford, R. T., Director, Nursing Homes Branch

Johnson, J. M., Director, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, March 5, 1987

The Committee met at 2:00 p.m. in room 228.

Consideration of Bill 176, An Act to amend the Nursing Homes Act, and Bill 177, An Act to amend the Health Facilities Special Orders Act

Mr. Chairman: Calling the Committee back to order.

This afternoon we are dealing with Bill 176.

As we left off, we just passed section 17b as amended by Mr. Reycraft's motion. We had, just prior to that, stood down a section, and I guess before we go any further, I would just like to know if people would like that to stay stood down and just keeping moving along, or do you just wish to revert to that one which we had had some controversy about?

Ms. Hart: Can I speak to it, please?

Mr. Chairman: Ms. Hart.

Ms. Hart: Mr. Sterling is proposing an amendment on that section which has been stood down, and he indicated that he would be a little late after lunch, so maybe we could wait until he comes back.

Mr. Chairman: Well, let us move along then and deal with the next item and we will then come back to 17a.

We are now at 17c. I have a new 17b(a) section to be proposed by Mr. Cooke. Mr. Cooke?

Mr. Cooke: I move that section 15 of the Bill be amended by adding the following as section 17b(a) of the Act:

"Where the director receives a report from any source that gives the director reasonable grounds to believe that the health, safety or welfare of a resident maybe at risk, the director shall cause an investigation to be commenced in the nursing home in which that resident lives to be visited within twenty-four hours."

Mr. Chairman: Mr. Cooke, that is in order. Would you like speak to it?

Mr. Cooke: The purpose of this clearly is that if there is a substantial concern about the safety, health, or welfare of a resident, and there is reasonable grounds to feel that the complaint is accurate, that is a substantial -- the resident then could be at substantial risk, and it should be, therefore, the requirement that the Ministry launch the investigation quickly and the home be visited within twenty-four hours.

It is obviously an attempt to try to separate out the different types of possible violations and to make sure there is a recognition that these types of violations are serious.

Mr. Chairman: Thank you, Mr. Cooke. Discussion. Ms. Hart?

Ms. Hart: Could I get a copy of this table? I do not seem to have one.

Mr. Chairman: Yes, there is; I will lend you mine. In the initial package then from the NDP, it is not a new motion.

Mr. Jackson: It makes it sound like it is a new motion, but it is really an old motion newly presented.

Mr. Chairman: It is listed in section 15, section 17 -- to create a new 17b(a) of the Act. Basically, it is coming back to an issue raised by Mr. Cooke on another matter earlier on about making a difference or having a different approach for health and safety risk questions.

Ms. Hart would now like to speak to it.

Ms. Hart: Since this is in accordance with Ministry practice in any event, we do not have too much difficulty with it. We would like to propose a change that instead of "twenty-four hours" the wording be "forthwith," because they might want it in lesser time than twenty-four hours, depending on how serious the complaint was.

Mr. Cooke: Certainly under this it says, "within twenty-four hours" so you could do it in less than twenty-four hours. If that is what it takes, that is what it takes.

Mr. Andrewes: Say, "forthwith within twenty-four hours."

Mr. Chairman: Is that an amendment, Mr. Andrewes?

Ms. Hart: I am proposing an amendment that the "twenty-four hours" be changed to "forthwith."

Mr. Chairman: Moved by Ms. Hart after the word "visited" in the last line, the word "forthwith" replace the words "within twenty-four hours." Mr. Jackson?

Mr. Jackson: Is this in the Regulations, Mr. Chairman, or this is in the existing Act?

Ms. Hart: It is the practice of the Ministry currently.

Mr. Jackson: Is it set out in a Regulation?
Okay.

Mr. Chairman: Further discussion of the amendment to change "twenty-four hours" to "forthwith"? Seeing none, all those in favour of Ms. Hart's amendment, please indicate. Down. Those opposed? The amendment carries.

All those in favour -- sorry. Any further discussion on this section as amended? Mr. Jackson?

Mr. Jackson: Could I just have somebody from the Ministry tell me what a report from any source - I think "any source" is pretty clear in my mind - what is the difference between a report and a complaint? Just refresh my memory what we are doing here.

Ms. Hart: I think it is Mr. Cooke's amendment.

Mr. Jackson: Well, the government finds no objection to it. Does the government understand what a report is versus a complaint, or is this any notification? Maybe Mr. Cooke should respond. I just don't know what a report means.

Mr. Cooke: I do not know why certain words are chosen when legislation is being drafted. But, obviously, the point of the amendment was that if a report comes to the attention of the director that a resident's health, welfare, or safety is at risk, then they have to act, whether the report comes from a staff member or resident or relative or a member of the community.

Mr. Chairman: I think it is a matter of law that "report" is broader than "complaint", in my view.

Mr. Andrewes: Report, conceivably, could come from the Fire Marshal's office.

Mr. Jackson: Okay. That is all I wanted was an understanding of that word.

Mr. Chairman: Anything further then on the amendment as amended? Seeing none, all those in favour please indicate. Down. Carried.

Now move to 17c. We have a number of amendments here as I recall, as we often do - let me just find the government amendment - in that we have a government amendment and a New Democratic Party amendment at least; I am not sure, I do not think I can find a Conservative amendment. The first to be heard would be the government amendment.

Mr. Cooke: There should, Mr. Chairman, be a new amendment that should be circulated.

Mr. Chairman: There are no staples on this amendment which is going to make it tough for you because there are two pages, and I want all members to take this challenge seriously. I know I will have the Clerk to look after me but the rest of you are on your own. Now this is an amendment from the government.

Mr. Cooke: Half and half.

Mr. Chairman: What we would basically do, since this is dealing with 17c(1) as well, this new amendment would be the one we would deal with first as a government amendment, and I would need a government member to read it into the record for me. Are there volunteers?

Ms. Hart: This is an amalgam of the government amendment originally proposed, plus one of Mr. Cooke's sections, and he indicated that he wanted to do it in a different way. Perhaps we could ask him which way he wanted to do it before we proceed.

Mr. Cooke: Basically what this amendment is, Mr. Chairman, is, as Ms. Hart said, "a combination"; and I gathered you were going to move the first part and I will move the consolidated, and we can then both take credit or blame.

Mr. Chairman: So what we will then hear from the government member who moves this - as I am understanding - will be everything down to 1b, and that 1b, as a separate motion or amendment, will be moved by Mr. Cooke. Mr. Cordiano are you up to this?

Mr. Cordiano: I do not have my glasses, but I will read that.

Mr. Chairman: You are going to read it anyway; thank you. I will stop you at one read.

Mr. Cordiano:

"I move that subsection 17c(1) of the Act, as set out in section 15 of the Bill, be struck

out and the following be substituted therefor:

(1) A licensee shall at the end of the year, as defined in the Regulations, prepare or cause to be prepared for each of the licensee's nursing homes statements of the operation and financial affairs of that nursing home during the preceding year."

1a) The statements shall include:

"(a) A statement of the revenue received by the nursing home or by the licensee in respect of the nursing home, from the Ministry, from residents, and from other sources.

"(b) A statement broken down by categories of the expenditures of the nursing home or of the licensee in respect of the nursing home including:

"(i) Payments to or for the benefit of the licensee, persons associated with the licensee, and persons who provide management or administrative services in respect of the nursing home;

"(ii) Expenditures in respect of staff salaries and benefits broken down by categories of staff;

"(iii) Expenditures for food, housekeeping, laundry, and other goods and services;

"(iv) Payments made and amounts charged or recorded for depreciation, debt carrying charges, rent, and business, and realty taxes;

"(c) Any other information respecting the operation and financial affairs of the nursing home that is prescribed by the Regulations."

Mr. Chairman: Thank you, Mr. Cordiano. Would the Parliamentary Assistant like to speak to this motion?

Ms. Hart: Yes. In the original Bill, what was set out was that the -- what would be required in the financial statements would be set out in the Regulations. We heard from the groups who made submissions that they would be more comfortable if this information were in the Act itself as opposed to in the Regulations. And so we have responded to that comfort level - if I could put it that way - not in the precise detail of every single piece of information that

will be required, since there is still a regulating power, but in a general way.

Mr. Chairman: Discussion. Mr. Cooke?

Mr. Cooke: If I might just put the rest of the amendment as an amendment?

Mr. Chairman: Certainly, do amend it.

Mr. Cooke: That this amendment be further amended by adding 1(b):

"Where a licensee alone or with associates owns or has controlling interest in more than one nursing home, the statements required under subsection 1 shall include an addition to statements prepared for each of the licensee's nursing homes, a consolidated statement of the operation and financial affairs of all those nursing homes; and that consolidated statements shall include the information described in subsection 1(a)."

1(c):

"The statements shall be made in the form and manner prescribed by the Regulations and shall be certified by the licensee's auditor".

Mr. Chairman: Mr. Cooke, the motion is in order and we will speak to this as a sub-amendment.

Mr. Cooke: The purpose of this amendment, Mr. Chairman, is to cover the operators who own more than one home. So that in addition to getting an indication of the financial situation of individual nursing homes and how their expenditures are proceeding, we will also get the overall umbrella-picture of the financial statement of the operation.

If I might say, Mr. Chairman, I think that the combination of the two amendments will provide, I think, financial accountability that has never existed in the past. We have an expenditure now of about three hundred or getting close to three hundred million dollars to nursing homes in this province, and, I think, both in terms of accountability to the taxpayers, but also to residents and their families. We have an obligation to have this kind of information made public. And I am very pleased that the government has moved, not only in their promise to do it in the Regulations, but now to make it clearly up front in the Legislation. I think it is a positive step in the right direction and, quite frankly, something that this caucus has been pushing for for over decade. I am very pleased to see

that it is going to be part of the new Nursing Home Act.

Mr. Chairman: Thank you, Mr. Cooke. Mr. Callahan?

Mr. Callahan: One word I am concerned about there is "auditor". That has a very definitive, technical meaning. In terms of "an audit" it is normally when they check the receipts against the expenses and income statements. And I know what Mr. Cooke wants, but I am not sure that that is whether he wants a CA to come in and audit, certify that. I am getting all sorts of letters in my office, as I am sure we all are, from the Canadian General Accountants, I guess, as opposed to being CAs. I do not know whether a better word could be used to achieve the same end but not place the technical connotation that "auditor" does.

Mr. Chairman: Ask the legal - connotation of that? Can we get a legal opinion on it, Mr. Campbell?

Mr. Campbell: We are asking in subsection 1(c) that the statements be certified by the licensee's auditor. The information which we are requesting in 1, 1(a), and 1(b) is, by and large, not something which would be the subject matter of a formally audited financial statement. This is a statement of operating expenses and revenue. The purpose of the certification is to make sure that at least some outside practitioner accountable under his own statute looks at and certifies this as to the accuracy, but it is not requiring of the auditor a formal opinion in the strict sense as one would find in the generally accepted accounting principles.

Mr. Callahan: It is not going to require a definition of "auditor", is it?

Mr. Chairman: I gather not.

Mr. Campbell: Well, expect to have regulations dealing with that if it promises to be a problem. In addition, of course, these statements will be forwarded to the Ministry for review as well, so there will be some check.

Mr. Callahan: Well, I just raise it because it seems to be a word of technological or technical limitation, and I certainly do not think that is the intent of anybody here.

Mr. Chairman: I gather it is not in the legal communities a problem?

Mr. Campbell: It is not an audited financial statement in the strict sense. An audited financial statement would include revenue from all sources within a corporation - all income. We are going to restrict our information-gathering to the operation of the nursing home itself; that is really our intent. The certification is not

something which requires a formal opinion. It merely shows that the particular information sought is accurate.

Mr. Chairman: Thank you. Other discussion? Mr. Andrewes.

Mr. Andrewes: I just wanted some clarification if I might on 1a(a):

"Statement of revenue received by the nursing home by the licensee --"

Mr. Chairman: We cannot deal with that right at the moment if it is all right with you. We have a sub-amendment act because of the way this has been done. So I have to deal with Items 1b and 1c only. Ms. Hart?

Ms. Hart: I guess it is self-evident that the government will be supporting Mr. Cooke's amendment.

Mr. Chairman: Thank you. Have you further discussion on Mr. Cooke's sub-amendments consolidated 1b and c? Seeing none, shall we take a vote on that then?

All those in favour, please indicate. Down. Carried. Then the motion in general as amended. Mr. Andrewes?

Mr. Andrewes: Some clarification in 1a(a), "from residents and from other sources." What might be those other sources?

Mr. Chairman: Mr. Sapsford, can you help?

Mr. Sapsford: It would include revenue received for services other than those provided by the Ministry or from residents' co-payment: hairdressing charges, additional charges. It could include revenue from services that the nursing home might provide to outside groups. It could include revenue such as bequests or private donations, if that is the case.

Mr. Andrewes: And in terms of the bequests and private donations, would there be confidentiality retained if the donor so wished it?

Mr. Campbell: Yes. We would only be interested in the income rather than from whom, necessarily.

Mr. Chairman: Supplementary on that from Mr. Jackson.

Mr. Jackson: As I understand it - or maybe I do not understand it - are nursing homes now able to ask confidential questions about bequests to the family or of the family or of a new applicant? Are they able now to say,

"Will there be any bequeaths?"

Mr. Sapsford: There is nothing that would restrict it. I think one has to bear in mind too that in the case of non-profit nursing homes, community donations might come forward to a nursing home operated by a hospital or a charitable non-profit. It is probably much more likely to receive this kind of income than perhaps a private nursing home.

Mr. Jackson: I guess the point I am getting at is: Is there a distinction between, say, a nursing home and a home for the aged with respect to admission and asking confidential information about income, bequeaths, et cetera, et cetera?

Mr. Sapsford: Yes. The basis on admission in a nursing home, the same level of financial information is not required by the Nursing Homes Act as it is under the Homes for the Aged Act.

Mr. Jackson: I just wonder if you are setting out a requirement of accountability with respect to certain information, and yet the operator is unable to ask that question?

Mr. Sapsford: No, the only requirement is that for funds received that that be included in the Statement of Revenue; that is all. That is as far as the section goes.

Mr. Chairman: Anything further, Mr. Andrewes?

Mr. Jackson: So, really what they saying, they are not able to ask that question in order to be of assistance to the auditor, and they are not anticipating any because they are not going to be asking a question. If it appears, fine, record it; but in no way are we going to be asking the residents. Thank you.

Mr. Chairman: Thank you, Mr. Jackson. Mr. Cooke, a question?

Mr. Cooke: Mr. Chairman, just on that point. I think that that will be particularly useful information, and I specifically point to the non-profits. In the province of Quebec, it is my understanding that there is a prohibition on a nursing home requesting or receiving anything when a person dies from their estate.

In Ontario, there have been cases come to my attention of non-profit homes who, in fact, approach residents of nursing homes and attempt to convince them that it would be in their best interest to put in their will some money. And I think that if the financial statements, as they are filed

with this, demonstrate that a substantial amount of money is achieved by non-profits in this way, then we might want to make a policy decision as to whether or not that is in the best interest of the nursing homes. So, I think a gathering of the information will now be available, and it will, perhaps, lead to further policy decisions in the future.

Mr. Chairman: Thank you, Mr. Cooke.

Any further debate of the amended section 17c. Seeing none, all those in favour of the motion as amended, please indicate. Carried. Thank you.

I have no other amendments for 17c(2) or (3). Are these replaced as well by this that they stay as part of the Bill? So, we should pass those. All we have done is replaced 17c(1) with this latest piece. We now have to pass sub (2) and sub (3) which we have no amendments for.

All those in favour, please indicate. Down. Carried.

Now we move to 17d.

Ms. Baldwin: With regard to subsections (2) and (3), I just noticed that to make them correspond with the newly done subsection 1, if I could have it read:

"The licensee shall file the statements, and the licensee shall post a copy of the statements."

I think that would be more consistent, if it is okay with the Committee.

Mr. Chairman: Is there agreement that there should be changing of the term "financial statement" to the term "statements" in both of those two subsections. Agreed? Agreed. Thank you. Shall 17c as amended carry? Carried.

Mr. Callahan: There is a motion by the NDP on 17c, is there not?

Mr. Chairman: No, that has been superseded by this latest motion. Shall 17c as amended carry? Carried. Thank you.

17d. I have no motion on the first four subsections, and then I have an amendment which would create three new subsections. How would you prefer to move on this, Mr. Cooke? Would you like to introduce yours and deal with the whole section, or shall we deal with each of these as we go through?

Mr. Cooke: I think we can deal with the whole section

as one, and I can just add mine but that is my view. I do not think this is a particularly controversial section.

Mr. Chairman: There are no other amendments to it, other than Mr. Cooke's, that are being proposed. So, therefore, why don't I suggest we discuss the whole matter and have Mr. Cooke move his amendment now.

Mr. Cooke: I move this section 17d of the Act as set out in section 15 of the Bill be amended by adding thereto the following subsections:

"(5) Every administrator shall in respect of each nursing home that he has charge of, within ninety days of being licensed, convene a meeting of the residents or their representatives, to advise the residents that they have the right to form a residents' council.

"(6) Where residents' council is not established in the nursing home after the convening of a meeting under subsection (5), the administrator shall convene such a meeting at least once a year thereafter until the residents' council is established.

"(7) Where three or more residents or their representatives at any time express an interest to their administrator in forming a residents' council, the administrator shall forthwith notify the director of the interest and assist the residents or their representatives in forming a council within sixty days of the request."

Mr. Chairman: All right, Mr. Cooke, that is in order.

Mr. Cooke: Basically, Mr. Chairman, all this is is lifting word for word out of the Regulations that now set up residents' councils, out of the Regulations and putting it into the Act. Since we are in this Legislation recognizing residents' council in the Legislation in a way that we have not in the past, it seemed appropriate to me that these sections of the Regulations should now appear in the Act.

Mr. Chairman: Thank you, Mr. Cooke. Mr. Jackson.

Mr. Jackson: Mr. Chairman, we seem to have reverted back to representatives as opposed to what I thought we clarified yesterday or the day before, which was the legal representative, so that we understood what that was.

Mr. Chairman: I notice that is true as well, not just

for the amendment to the section but also to (d), 17(1), et cetera, as well. Any advice on this from our legal draftsman?

Ms. Baldwin: There was some discussion in Committee this morning with regard to the fact that the issue of residents and their representatives comes up in many different ways and in many different contexts in the Bill. I am somewhat reluctant to comment too much on this, because really what is involved is a policy question rather than a drafting question. So, perhaps I can avoid the issue and pass it to my colleagues from the Ministry of Health.

Mr. Chairman: Thank you. Mr. Johnston?

Mr. Johnston: It was discussed earlier, and I guess our view is that this is one of those areas where in lieu of elaborate definitions, it is better to leave it somewhat undefined and, therefore, not use the term "legal representative". I mean, this is calling a meeting to convey information, and I think our view in drafting that was that it would be preferable to leave it informal. It will be a meeting of residents and a number of next of kin, essentially.

Mr. Jackson: It is not a big thing, Mr. Chairman, it is just the fact that we have a trigger mechanism so that it is done at least, at a minimum, on an annual basis. Apparently eighty-some-odd percent of the nursing homes in Ontario have councils as it is. So, we are only dealing with that twenty per cent or less that do not.

But it strikes me that if anybody -- I mean as the MPP for an area where all of my nursing homes have residents' councils, but if I didn't have one, I could be in every couple of weeks as the representative and finding two other residents who would agree with me and causing this clause to be triggered. I just wonder to what end are we applying -- I just use that as one example of an MPP who wishes to trigger the issue every month or every three weeks until such time as someone agrees that there should be a council.

Mr. Chairman: The policy decision - which is essentially what you made this morning on the other matter - was not to use the word "legal representative", because it was felt that would then get us into the whole question of somebody's competence which could be more limiting than we would like it to be and, rather than that, we would leave it up to the reasonableness of those involved to make determinations on it. And for consistency's sake, it seems to me if we have made that decision, then we will probably stick with this broader definition here.

Mr. Jackson: But it is fair at this point that anybody could set themselves out as representing a given

tenant or group of tenants.

Mr. Chairman: One of the things that could change that is if you try to put in a definitional section - something more specific. But at the moment, it would be somebody who the resident, I presume, considers to be their representative.

Ms. Hart: The other thing that came up this morning is that the whole area is being considered by the Attorney General, because it doesn't just arise in this statute, it arises in very many statutes. And if we take a stand on this one and it is inconsistent with what comes eventually from the Attorney General, then we may be getting ourselves into difficulties.

Mr. Chairman: Mr. Cooke?

Mr. Cooke: Am I correct in understanding that no one can just walk into a nursing home and talk to the resident and say, "Today I am your representative." There is obviously some consistency that has to be involved in order to to be a resident's representative.

Mr. Chairman: We also have in the definitions here two terms: one is "representative" and the other is "legal representative". 17d(7)(3) talks about legal representatives and their rights and other matter. And the other areas within this section, we are talking about representatives.

Mr. Jackson: I have got the case with the Workers' Compensation where I have people floating in - neighbours, and people that were met in the pub the night before - setting themselves out as the worker's representative. Which is fine, except that anybody, whether they are qualified or not, is setting themselves out in some circumstances, and all the paper that has to be produced and so on and so forth. I just had a personal experience with this in another Act, and that is why I just raised the point.

It will not surface in my jurisdiction because I have got councils in all my homes. I just wondered what we anticipated might happen with this? It is clearer to me.

Mr. Chairman: Mr. Epp?

Mr. Epp: Would it not be assumed that if someone is going to represent another person that that other person would have to sign something to permit them to represent them? You cannot just have somebody go and say they are going to represent "B", and then say they are representing them. There is going to have to be some signed statement or some form.

Mr. Chairman: Ms. Hart would like to answer.

Ms. Hart: In practice I understand it is the next of kin.

Mr. Epp: Whoever that is, because next of kin may be any one of half a dozen children, or whatever you have got. And you could not have each one of them rotate and represent them eight different times, could you?

Mr. Chairman: The reason it does get to be more complicated, and why we probably are wise at this stage to leave it unaddressed, is there are also many citizens of the world in the nursing homes in the province of Ontario, as in many of our institutions, where next of kin concepts do not apply at all. I think we are probably wiser - given the fact that this is under review in terms of the whole question of trusteeship and that sort of thing within the province - that perhaps we should not try to second guess that at this point.

Mr. Callahan?

Mr. Callahan: I imagine that it would have to be anyone who had -- it is almost an agency relationship; it would not be restricted, I would not think, to just next of kin? Anybody who has got the authority to represent that person I would think would be within the framework of "representative".

Mr. Chairman: Mr. Sapsford?

Mr. Sapsford: Well, the common practice is that when someone is admitted to a nursing home, there is immediately a relationship established with the family of the resident - be that the spouse, be that the children, be it a niece or nephew, be it grandchildren. And the home usually, with the family, establishes who is that person that we contact in cases of emergency or transfer to hospital; he may have problems that need to be discussed with the family. And so in the use of the word "representative", in common practice, it is that person who has been established as being closest to the resident in terms of family relationships. Or in the case, sometimes, where there is no family, the closest friend. So it is in a practical sense, the representative is the one that the nursing home has established as being the next closest person to work with that person in the case of problems or other issues.

Mr. Chairman: Any further discussion of Mr. Cooke's amendment to 17d? Seeing none, shall Mr. Cooke's motion carry? All those in favour? Carried.

Shall 17d as amended carry? Carried. Thank you.

Now 17e. I have a government amendment to 17e(1) so that is what we should start with. Mr. Cordiano?

Mr. Cordiano: I move that subsection 17e(1) of the Act as set out in section 15 of the Bill be amended by striking out "for each" in the first line and inserting "in lieu thereof at the request of a".

Mr. Chairman: Thank you. Just a wording change.

Ms. Hart: Not much can be added. If the residents do not want a council, then they do not have to have one.

Mr. Chairman: Right. Any further discussion of the government amendment? Seeing none, all those in favour, please indicate.

Mr. Andrewes: Time to call our members, Mr. Chairman.

Mr. Chairman: Oh, you wish time to call... On this vote? Okay. You have up to twenty minutes to call the members.

The Committee adjourned for twenty minutes.

The Committee resumed at 3:00 p.m.

Mr. Chairman: I call the meeting to order. We are now taking a vote. I remind members that the point of having the break is so that you get your members in and we do not expect to be left to the last second always but to try to get what members are going to be in as soon as possible.

The vote is on the government's amendment to subsection 17e(1), which, as you may recall, replaces the word "each" for "at the request of a."

Do you wish this to be recorded votes since you have called for your members to come in, or do you want it just to be a regular vote?

Mr. Andrewes: I want it to be a regular vote.

Mr. Chairman: All those in favour of Mr. Cordiano's motion please indicate. Down. Those opposed? Motion is defeated.

We are now dealing with the initial motion.

"There shall be established for each residents' council, a residents' council advisory committee to be composed off..."

et cetera. Any further discussion? Mr. Cooke?

Mr. Cooke: Thank you, Mr. Chairman. I understand what the government is attempting to do with the section, and I think we all support the goal of attempting to get number one, community involvement, and as well provide the proper back-up supports for residents' councils so that they can be more effective -- perform a more extensive role than they currently do.

My concern is that what this amendment is really doing is trying to perform a form of advocacy that I think would be weak and ineffective advocacy. I would prefer that we look, instead, to the report that Father Sean O'Sullivan will be providing the Legislature and the government within the next number of months and I would hope that his report would provide us with the ability to have legislation that will provide for advocacy, that will be completely independent of the Ministries of Health and COMSOC and other Ministries where the advocates would play a role, and I would hope that the report would also provide us with the ability to have advocates that can work not only with individuals, but also with groups of individuals which would obviously include residents' council advisory committees.

I have problems with a process that allows the Minister to basically make a number of appointments, and I really wonder whether those appointments, since they would not be independent, would be seen as, instead, people that could not be -- and I am not suggesting that these people could not be trusted, but I am suggesting that that could be the perception of residents and residents' councils -- that they could not be trusted, that they had a particular role to play with the Ministry rather than that primary role being with the residents' council.

Throughout this whole debate on this Bill I have heard advocacy groups who have supported this concept and I have heard advocacy groups who have opposed this concept. And I think -- I personally hope -- that the day will come when residents' councils can actually play a much more substantial role than they now play in this whole process.

I refuse to believe that just because people are frail and elderly and in nursing homes that they cannot play a role of advocating for themselves with the proper supports. I really believe that the problem with the current system is not so much that they can't; it is a matter that when they enter some of our institutions that the expectation is such that they are not going to play that role and that they are going to be passive and that eventually that is what happens because that is what the expectation of the system is.

I just do not believe that the proposal the government has come up with will correct that problem so I have to vote

against the setting up of residents' council advisory committees.

I hope that when it comes to the issue of residents' council advisers that we might be able to work out something where we can provide some assistance through a residents' council adviser or I guess I would prefer to call the person a "residents' council assistant" and look at that as being the first step to providing some of the assistance that residents' councils require. And then I hope the next major step will be through a decent arm's length advocacy setup through legislation under the Ministry of the Attorney General.

Mr. Chairman: Thank you, Mr. Cooke. Ms. Hart?

Ms. Hart: It was the government's intention in putting forward this amendment to give -- first of all, to enable the residents' council to act by committee. It is unrealistic to expect that a residents' council home with three or four hundred beds will act in any other way than by committee.

I believe we heard from virtually every group but one that they wished the community to have some participation in the home. They viewed it as a good thing to bring in representation from the community, and we had responded to that. This was our response to that, that wish that we heard in early consultations.

The point about the Minister appointing three - at least three - of the members of the committee was indicated during the course of debate. The Minister intended to make those appointments in consultation with the residents' council, and there was no intention and is no intention to have Ministry spies - I believe one person put it that way - on the committee. It was much more the intention to make available what was necessary for the council to be effective, and that is why there were some able-bodied people to be appointed and that was why certain powers and functions were given to that committee.

Mr. Chairman: Other discussion? Seeing none. Take the vote on 17e(1). All those in favour please indicate. Four. All those opposed? Five. The motion is defeated. The section is struck.

Mr. Chairman: I now have amendments from Mr. Andrewes on 17e(2). I do not think I have any others. We will have to renumber these afterwards. The members should not be concerned about that, but rather, just to -- So you are on top of exactly what we are dealing with, we are dealing with the numbers as they exist presently and what is in front of you.

Mr. Andrewes, do you want to move these...

Mr. Andrewes: You want me to move individually, do you?

Mr. Chairman: I thought that might be the easiest way. Why don't we do that; move them individually.

Mr. Andrewes: All right. I move that subsection 17e(1) of this Act as set out in section 15 of the Bill be struck out.

Mr. Chairman: That has been done.

Mr. Andrewes: Has been done. Thank you. I move that subsection 17e(2) of the Act as set out in section 15 of the Bill be amended by striking out "committee" in the first line and inserting in lieu thereof "residents' council" and by striking out clauses, (c), (f) and (h).

In the draft that I circulated, I think it said (c) and (f).

Mr. Chairman: Are members aware of that? The only difference between that which has been circulated and the one that has just been read to us is the adding of the section (h) as one of the clauses which would be struck. The motion is in order. Would you like to speak to that, Mr. Andrewes?

Mr. Andrewes: Well, Mr. Chairman, a number of people, in responding to our call for delegations and appearances before this Committee, indicated concerns about the whole section 17e as set out in the amendments and the role of the residents' council advisory committee.

I think my concerns are similar to a number that were raised. I had one further. I felt rather strongly that the residents' council advisory committee was being saddled with responsibilities that were clearly, in many cases, those of the Minister.

There were a number of the delegations who raised the issue of community involvement. My understanding of 17d(3) where it says, "a person selected by the resident allows for a degree of community involvement in the residents' council." There were other delegations and indeed Mr. Cooke, just in speaking to the earlier section, indicated that there should be a role, a formalized role, for the residents' council.

What I have attempted to do in proposing this amendment is to give the residents' council that formalized role and as we move on through section 17 to provide the support for the residents' council in performing its service

on behalf of the residents.

Mr. Chairman: Thank you. Any further discussion on Mr. Andrewes' amendment? Ms. Hart?

Ms. Hart: The part of the amendment that gives us some difficulty is the taking out of the subsection which enables now the council to receive and investigate complaints. It is not the intention of the Ministry to abdicate its responsibility for prosecutions and investigations under the Act.

It, instead, is the intention of the original amendment to enable the council to empower the council to deal with some minor complaints on its own always with the Ministry having the overriding responsibility. But we felt that, as you have said, residents, just because they are frail, are quite capable of taking their own affairs into their own hands and we wanted to give them the tools necessary to do that.

Mr. Chairman: Mr. Cooke?

Mr. Cooke: Very briefly, Mr. Chairman. I understand the comments that the Parliamentary Assistant just made. My concern with (c) is that clearly - in my view anyway and I think in the view of a number of groups that appeared before this Committee - the responsibility to receive and investigate complaints from residents and any other persons should lie with the Inspection Branch of the Ministry. I do not think there could be a transfer of that important role to the residents' council.

I do not think there is anything that would prohibit residents' councils from looking at specific complaints if it is not mentioned - there is nothing that prohibits them from doing that - but to specifically set that out as a responsibility, I think, takes a step towards making the residents' council investigators or inspectors, and I think that role has to clearly be with the Ministry.

All one has to do is take a look at the history of Country Place Nursing Home and understand that in that particular circumstance there were not any complaints from the residents and there is good reasons why that happened. But I think if there is any legislative authority that transfers the responsibility from the Ministry to residents' councils, no matter how minor that transfer is, I think that there is a danger and I think it is inappropriate.

I think the amendment as set out by Mr. Andrewes clearly indicates a role for residents' councils - an expanded role for residents councils - and I think that perhaps what the Ministry would like to do or should do is after this is operated for a couple years, perhaps do an

actual formalized review of the effectiveness of residents' councils and what steps at that point could be taken to further improve the role of residents' councils after we have attempted this new role with, in fact, a staff component to assist the councils.

Mr. Chairman: Mr. Andrewes?

Mr. Andrewes: I want to point out briefly that section (e) of 17(2), remaining as part of this amendment, really does provide a role for the residents' council in attempting to mediate and resolve any dispute between a resident and a licensee.

The purpose of removing section (c), of course, as Mr. Cooke and others have pointed out, is that it is inappropriate, in my view, that the residents' council or a sub-group of that residents' council be the body charged with the responsibility of receiving and investigating complaints from residents and other persons. It is an expectation that falls to the residents' council, which they have not got the authority to deliver on, and it seems to me an expectation - an extremely high expectation - to be placed with the residents' council group. I think they can play a very valid role in solving the minor problems and that authority is given to them under (e).

Mr. Chairman: Thank you, Mr. Andrewes. Mr. Cordiano?

Mr. Cordiano: I think that by now, having gotten rid of the role of the committee - I do not want to rehash what Ms. Hart said earlier about the importance of having community members involved with the residents' council and in effect setting up a separate entity in the form of a committee - but no doubt the residents' council will be able to carry out its duties far more effectively and certainly you have spelled out some of these things by including it in subsection 2, but I think it has been watered down.

The role of the residents' council -- I think what we heard was that they needed the support of community members for the residents' council to look at such things as inspection reports and to look at such things as services that are being provided by the home and review the operation of the nursing home in its overall components and to have people that have a little more expertise to advise the residents' council.

I do not know what you propose to do about that, and having removed the role of the outside members of the community on that council, I certainly hope that the residents' council will be able to perform those duties to the most effective manner that can be done, and I just hope that it has not been watered down for the residents' council.

Mr. Chairman: Thank you, Mr. Cordiano. Mr. Cooke?

Mr. Cooke: Just very briefly I would like to point two things out. One is that under section 17d(3) there is the possibility of residents' representatives being a member of the residents' council so there is an opportunity for others to participate. And number two, what this amendment actually does, is that it does not, in fact, decrease the responsibility of the residents' council. It, in fact, increases the role of the residents' council by taking the powers that were going to be given to the residents' council advisory committee and giving them to the residents' council.

Mr. Cordiano: I wasn't arguing that the role of the residents' council has been hindered in anyway. I think, in fact, what we tried to do and is still being maintained with this is an enhancement of that role.

I think where you are pointing out 17d(3), that would be in lieu of the resident, that you are having his or her representative as a member of that council where that resident cannot or will not want somebody else to be his or her representative on that council. But I do not think that it is necessarily the same thing as having other people from the community participate to enhance the role of the council, but I just wanted to point that out.

Mr. Chairman: Ms. Hart would like to pick up on that.

Ms. Hart: Yes. Just following on from that point, as Mr. Sapsford indicated, the representative is usually a member of the family, and we heard from at least one of the groups that that sometimes is a problem, that they would like to have the broader community represented.

Mr. Chairman: Any further debate on -- Mr. Davis?

Mr. Davis: I would just like to point out that that section, in fact, does allow the resident to select someone other than a relative to sit on it. And I think that as this process develops I would assume that the various people who form the residents' council, in the words of the Parliamentary Assistant, are quite cable, even those who may in some cases be feeble in physical stature, will learn quickly to move into the community to select some advocates on that council. I think that you are underestimating the ability of the seniors.

Mr. Cordiano: I do not think that that is what we are saying, Mr. Davis. I think the point -- if you are appointing someone else other than yourself because of the fact that they are incapable of representing yourself, fine. You may appoint someone to represent you as your legal

adviser or your legal representative -- what-have-you. But the intention of the Committee is to include members of the community that have expertise or perhaps were retired lawyers or accountants, et cetera -- any number of invaluable abilities to offer to the residents' council.

I do not know that you will get that now because of 17d(3) allowing for someone to have his or her representative represent that person on that council. I do not think it is the same thing and I do not think you can argue that.

Mr. Davis: I just did.

Mr. Cordiano: With any effect.

Mr. Chairman: This is another point and I am glad the Chairman does not have to rule on that. Is there any further debate on Mr. Andrewes' amendment? If not, I will then call the vote.

All those in favour of Mr. Andrewes' amendment - do you need to know what it is again? - which basically amends subsection 17e(2) of the Act as set out in the section 15 of the Bill be amended by striking out "committee" in the first line and inserting in lieu thereof "residents' council" and by striking out clauses (c), (f) and (h).

All those in favour will please indicate. Down. Those opposed? Carried. Five to four.

Mr. Chairman: I have a new amendment -- Is this section 3 that I am getting? So section 2, as amended, carried. All those in favour? Carried.

I have a new section...

Mr. Callahan: Three and four.

Mr. Chairman: Yes. A new section 3. Mr. Callahan?

Mr. Callahan: I move that the Bill be amended by adding to section 17e thereof the following subsection:

"3. The Minister, with the consent of the residents' council may appoint no more than three members to the residents' council for a term not to exceed three years.

"4. A member appointed under subsection 3 shall represent the interests of the residents of the nursing home and shall live in the area in which the nursing home is located."

Mr. Chairman: You do not happen to have a copy, do

you?

Mr. Callahan: I do if you can take this as that.

Mr. Chairman: Thank you. Moved by Mr. Callahan and it is in order although it might normally have been seen to have come under 17d because we are now dealing with the functions of the residents' council rather than the...

My only difficulty with it is in terms of where it is being placed. It seems to me that the first thing would normally be under the section of the composition of the council, which would have been under 17d and not under its functions, which are under 17e.

Mr. Cordiano: Mr. Chairman, given the apparent conclusion in removing one section and then trying to designate the functions -- spell out the functions of residents' council where that was a committee previously, I think this is directed to the entire section of residents' council.

Mr. Chairman: My difficulty -- What this could be seen to be doing -- if I might put it this way, "could be" although it certainly is not by this Chair -- could be seen to be actually circumventing something which has just been decided upon and putting it into another guise because it is now not fitting with what we had initially.

But let me put it this way: The Committee is willing to find this in order at the moment. Either we can debate it, and if it were to carry, then it can be put in its proper location. Rather than as an amendment to (e), it would become an amendment to (d). If you would allow me to find it in order. But I otherwise find it difficult to do so because I do not think it is dealing with the matters which we have before us.

Mr. Andrewes: I do not think you can find it in order, Mr. Chairman, because it is completely out of order in that it should have been debated under section 17d. I would not object to you seeking unanimous consent to reopen 17d or as an alternative we can wait for a third reading of the Bill and do it in Committee as a whole.

Mr. Chairman: Mr. Cooke?

Mr. Cooke: We have been pretty flexible every time we deal with legislation with this Committee. It would seem to me that -- I would rather, if we are going to deal with it, I do not want to go into Committee as a whole -- the House -- when we come back and once we have to; let us reopen the section and put it in the appropriate section.

Mr. Chairman: We have passed sub 2; right? Is it the

will of the Committee that we reopen section 17d? Agreed.

The amendment that has already been read, rather than having to read it again -- or would you like it read again? Do we have to have it read again, because you do not have it before you? Then I will let the Parliamentary Assistant read it.

I was going to give it a try, but looking at the hieroglyphics I decided that better somebody who knew why they put it forward. And this would now become... It does not really matter; it would be an amendment sub (d) and the renumbering will be looked after later.

Ms. Hart: I'll ignore the numbers.

Mr. Chairman: Ignore the numbers. I think it will probably be a new sub 4.

Ms. Hart:

"The Minister, with the consent of the residents' council, may appoint no more than three members to the residents' council for a term not to exceed three years."

Next sub-section:

"A member appointed under sub-section 3 shall represent the interests of the residents of the nursing home and shall live in the area in which the nursing home is located."

Mr. Chairman: I find that in order. Mr. Cooke?

Mr. Cooke: Can I just ask, it says "with the consent of the residents' council." Would it be inappropriate or unworkable to suggest that it should be at the request?

I mean, it sounds to me -- Maybe I am wrong and maybe it would be appropriate that the Ministry is initiating this, and maybe that is the purpose of it, that the Ministry is actually going to initiate this by saying "We have three people here; would you accept them?"

Is it your fear that you would have no requests from councils or that it would be too difficult to let them know of this or could not the residents' council assistant advise the residents' council and then the request could be -- Rather than the Ministry imposing something, that it actually comes from the residents' council.

Ms. Hart: I see what you are aiming at. Our only concern is that obviously, if we are seeking consent, we have to deal with the residents' council and get their

consent. If we say "upon request" then we are precluded from even suggesting - or we may be precluded - from even suggesting through the, whatever we are going call him: "adviser," that these three community people might be good additions to their council. I just do not want to preclude, if there is no request, a suggestion, however it might come, through the adviser.

Mr. Chairman: Thank you. Mr. Jackson?

Mr. Jackson: Thank you, Mr. Chairman. I think that Mr. Cooke's comment has merit given that you might get into a situation where it fits. I am sure the Ministry does not have three individuals for every nursing home in Ontario. You would have to advertise for this. And it seems to me that it would be difficult to include a caveat that you are subject to being approved by the residents' council or the fact that the residents' council may not accept you once placed as a nominee by the Ministry.

Where that is a public call for participation, that can create some possible embarrassment. And it is somewhat unusual, with respect, as opposed to some of the other types of mechanisms where we have a government call for participation or a municipal call for participation.

So in that regard, I think it is implicit. If the purpose is to have community involvement, then somehow that should be communicated in the Regs and that, in fact, if they are having difficulty obtaining community involvement, then it would be to the Ministry to obtain some volunteers.

So I think there is potential for embarrassment if the council rejects a certain nominee for whatever reason. I like the recommendation for request.

Mr. Chairman: Let us hear a comment by Mr. Davis and then the Parliamentary Assistant.

Mr. Davis: Mr. Chairman, I think the suggestion of Mr. Cooke is a worthwhile suggestion. All through the legislation and all through the debates - the ones I was here for - there was a suggestion made very strongly by the Minister and his representatives and representatives of the government that the senior citizen individuals were quite capable of making decisions and carrying out certain kinds of responsibilities.

Now what we are saying is, "Well, thank you very much but you are not going to have the decision-making in selecting the people from the community that you would like to have sit on the Committee."

And I think Mr. Jackson rightly points out that if you make an advertisement and you get three or four people, the

Ministry then goes to the council and says, "Here they are," there would be all kinds of difficulty. And to be quite honest, as was pointed out, the council probably would not reject any of them.

But I think if it is worded in such a way that the council may, request that leaves it to the council's decision, it leaves it to the seniors' decision to decide how they go about incorporating individuals from the community to take part, and I think it gives them another area of responsibility. I understand that is the intent of the Bill. So I am very favourable to Mr. Cooke's suggestion.

Mr. Chairman: Thank you. Mr. Cooke?

Mr. Cooke: Mr. Chairman, this particular section of the Act has caused a fair amount of debate here in the second reading and outside with interest groups. What I would prefer that we do is to have this amendment typed up, and since many of us have made decisions that we were not going with an advisory committee and since this is sort of a fall-back position and this is the first time that we have been presented with this, I would really like the opportunity to talk to some people who I have been dealing with on this Act. And I would prefer that this amendment is stood down until next week.

Mr. Chairman: I am in your hands. We can have a copy of this for you in five minutes if you would like it.

Mr. Cooke: It is not the copy of it as much as the people that have shown an interest. And this is the first time this concept has been presented. They made presentations to the Committee and I think it would be appropriate to consult.

Mr. Chairman: Mr. Cooke is suggesting that we, now having reopened 17d, leave it open until sometime at the beginning of the week to get people's response to this concept before we deal with it. Mr. Andrewes?

Mr. Andrewes: I do not have any particular difficulty with that, Mr. Chairman. I think clearly the -- I can go through the briefs here and I can cite you at least four or five instances where delegations strongly supported the concept of community involvement.

They talked about it under the section of residents' council and even residents' advisory committee, and I think there was some confusion as to which was which on the part of some of the groups. But certainly the concept of community involvement was strongly supported, and I think, with the reservation that Mr. Cooke has expressed relative to the appointment based on request of the residents'

council, I am prepared to move ahead and deal with the amendment. But if that causes difficulty, then let us stand it down.

Mr. Chairman: Ms. Hart?

Ms. Hart: I am content to accede to Mr. Cooke's request.

Mr. Chairman: Will we stand it down then until the beginning of the week at some point or other, as we get back to all the other things that have been stood down.

Mr. Chairman: We now go back, if I might, having completed 17e we now move to 17f.

Under 17f, we have an amendment from Mr. Andrewes to 17f(1).

Mr. Andrewes: I move that subsection 17f(1) of the Act, as set out in section 15 of the Bill, be amended by striking out "committee" in the first line and in the second and third lines and inserting in lieu thereof in each instance, "residents' council."

And I further move that subsection 17f(2), (3) and (4) of the Act as set out in the section 15 in the Bill be struck out. And I further move that subsection 17f(5) of the Act, as set out in section 15 of the Bill, be amended by striking out "or withhold or destroy, conceal or refuse to furnish any information or thing required by a residents' council adviser for the purpose of an inspection" in the third and fourth and fifth lines.

Mr. Chairman: I need your guidance on this. If I define this in order, it has to be that we are dealing with the whole of that as a section and are dealing with all of these matters in toto. If not, if you wish to do it clause by clause, then two of the motions are out of order; it would just be a matter of voting against the subsections.

So I am in your hands. Do you want to deal with 17f as an entirety and deal with this as a package or do you wish to go clause by clause? Let us deal with them as a package then.

Mr. Andrewes, speak to your package.

Mr. Andrewes: Well, the package, I think, just tidies up the whole role of the residents' council adviser. The role as envisioned by the Ministry when they drafted these amendments, of course, was much broader as was the role of the residents' council advisory committee.

In my view, the residents' council adviser could

perform some very useful functions in assisting the residents' council but does not need either the responsibility or the authority to do all the things as set out in section 17. So I have simply limited that authority and thereby limited the responsibility of the residents' council adviser.

Mr. Chairman: Mr. Cooke?

Mr. Cooke: Mr. Chairman, I do not have a written amendment, but I am wondering whether I could move an amendment to the amendment that would replace "residents' council adviser" with "residents' council assistant", which, I think, is more in line with what the Committee is thinking this person should be doing.

Mr. Chairman: The motion would be that wherever the term "adviser" is used, we would replace it with the word "assistant."

Mr. Cooke: Is he taking it out every place where it is used?

Mr. Chairman: Yes. It has been suggested by legal council that we leave it until right after you have taken the vote on the entire package. Then there could be a motion around that and that would be the easiest thing to do.

Mr. Cooke: Then may I ask a question? I am wondering why, if we have a residents' council adviser or assistant, 17f(2): "In carrying out his or her duties, a residents' council adviser shall take instructions from and report to the residents' council..." Why would we not make it clear that this person takes instructions from and reports to the residents' council? You are eliminating that section.

Mr. Andrewes: I do not have any particular difficulty with that. I think the issue was raised by legislative counsel more particularly because it was a specific function of the residents' council adviser in performing his or her role relative to the proposed committee. I do not have any particular difficulty in leaving it in, Mr. Cooke.

Mr. Cooke: I think myself that it makes it very clear that this person then is working for the council and not for anyone else.

Mr. Andrewes: I do not know how one does that.

Mr. Chairman: I think we may have to go back to doing each individual clause. Why don't we do that? There are going to be changes like that which are acceptable to the members.

So the first one we come to is Mr. Andrewes' motion on 17f(1) of the Act as set out in section 15 of the Act, that it be amended by striking out "committee" in the first line, and in the second and third lines inserting in lieu thereof in each instance, "residents' council."

Any further debate on that matter? Seeing none. All those in favour, please indicate. Down. Those opposed? The motion is carried.

Mr. Chairman: Then we move to 17f(2) and the motion is that it has been that it be struck out, but I presume you would like to replace that with something?

Mr. Andrewes: I would move that 17f(2) be amended by striking out in the last line the word "committee" and by substituting therefor -- inserting in lieu thereof the words "residents' council."

Mr. Chairman: Thank you, Mr. Andrewes. Any discussion? Ms. Hart? Oh, sorry. We're now reading from -- "In carrying out his or her duties, a residents' council adviser shall take instructions from and report to the residents' council." Ms. Hart?

Ms. Hart: That makes some sense to me, given that we have lost the committee that the adviser or whatever it is going to be called, should report to the council. I think we can support that one.

Mr. Chairman: It would be a great job. I might look for an appointment there. Further discussion? No further discussion? All those in favour of the amendment, please indicate. Down. Carried.

Mr. Chairman: I guess I should have said in each of these cases, we will do the whole thing as a piece of the end, in terms of it as amended. Carried.

Mr. Chairman: Subsection 3 was also to be struck out and the same motion will continue. Mr. Cordiano?

Mr. Cordiano: Well, I think it, given the changes that are proposed, I can't see what role this adviser is going to be able to play if he does not have some access to information that is pertinent about the home and the operation of that home. And I think that the intention here was to give that adviser relevant information in order to instruct what was then perceived as the "committee" will now be the "council."

I think that was the main intention here, to be able to look at the accounts, documents, bank accounts -- that sort of thing. I think if you are looking at the posting of financial statements, and now we have added as well an

amendment that will deal with the consolidated financial statements.

I think from time to time it was envisaged that the adviser would be looking at more specific information to give some direction to the committee that will now be the council only. So I have some difficulty seeing if you do not spell out what the adviser may do in terms of accessing relevant information, I do not see that that person will have the ability to do that.

Mr. Chairman: Mr. Cooke?

Mr. Cooke: Mr. Chairman, this is the one section that gave me probably as much or more concern than any others in these couple of sections because I think section 3 clearly sets the role of this residents' council adviser as being an advocate. If, in fact, a residents' council adviser determines that there is something wrong, then it seems to me that it is the role of that person to do just like anyone else is required by this Act and that is to report to the director and the director will carry out that investigation who does have access to all of this.

In terms of what the residents' council adviser will do, it is all spelled out in the preceding sections. They have, just as everyone has, access to financial records that are posted and provided to the Ministry. They have access to the inspection records which are available publicly. So there is a fair amount for this person to assist the residents' council in doing. But if you took subsection 3, I think what you are really doing is converting this person into an advocate and that is inappropriate in my view, and I think we will have to wait for Father Sean O'Sullivan's report and hopefully the legislation that results from that.

Mr. Cordiano: You might be able to say that this person has investigative powers in the sense that that person would be able to look at some of the relevant information and investigate from that point of view, but I think that is a far cry from saying that this person would act as an advocate. If that person is to be an adviser - an assistant, if you will - then what you have done is essentially made that person an advocate because he is there to assist the council. And what other role can he fulfil other than to act as an advocate on behalf of the council? But if he is there, and we have specified certainly for that person to access information, then that person perhaps has more role to fill as investigator than an advocate as you see it; but that is my point of view, Mr. Chairman.

Mr. Chairman: Any further discussion on the motion to strike sub 3? Seeing none. All those in favour of Mr. Andrewes' motion?

So we are voting on the section -- I got myself turned around here. If you are in favour of the section, you vote "Yes." And if you want to delete it, then you vote against.

All those in favour of the section please indicate. Down. Those opposed? The section is struck.

Mr. Chairman: It has also been moved by Mr. Andrewes that sub 4 be struck; therefore that is not in order. What we are dealing with is if you are opposed to it, you vote against it. So we will have discussion on the merits of section 4.

Mr. Cooke: It goes hand in hand with section 3.

Mr. Chairman: Dispense? All those in favour please indicate. Down. Those opposed? The motion is defeated.

Mr. Chairman: Sub 5. Mr. Andrewes' motion here is the striking out of a few words: "or withhold or destroy, conceal or refuse to furnish any information or thing required by a residents' council adviser for the purpose of an inspection," which are found in the third, fourth and fifth lines.

Do you wish to speak to that at all?

Mr. Andrewes: Mr. Chairman, the same argument holds here with this amendment as holds for 3 and 4 where we asked that the section be struck down.

Basically, it is authority and power and responsibility that would be delegated to the residents' council adviser that is not appropriate.

Mr. Chairman: Any further discussion on this motion? I see none. All those in favour of subsection 5 please indicate -- Sorry. All those in favour of the amendment please indicate. Down. Opposed? The amendment carries.

Are there any other amendments to 17f? I do not believe so. So 17f as amended carried. Carried.

Shall we deal with 17g and (h) before we decide what we will do otherwise? I do not think I have amendments for either. I do have (h)? So 17g; is 17g carried?

Mr. Chairman: Is there debate on 17g? It refers to things that don't exist now.

Mr. Cooke: What's wrong with 17 --

Mr. Callahan: Yes, what is wrong with it?

Mr. Chairman: It does not make sense for anyone to

pass it as it exists, but you could replace a couple of words and develop a rationale for that.

Ms. Hart will move.

Ms. Hart: Mr. Chairman is quite correct; it does not make sense to have the "committee" in there where it appears, but I would propose an amendment deleting the word "committee."

Mr. Chairman: Move to delete the word "committee" on the second line. Thank you, Ms. Hart. Any discussion? Mr. Cooke?

Mr. Cooke: The only thing that I could see that would be offensive in that section perhaps would be: "including financial information and assistance to them provided for by the regulations." What exactly is that referring to?

Mr. Chairman: We haven't passed any of those as yet. So --

Ms. Hart: One of things that it would cover in the financial information section -- Did we not make an additional -- Wasn't there a regulation making power for additional financial information?

Mr. Chairman: Yes. Yes. That's correct; we did do that. Any other comment the advisers would like to make? All right; so the motion is that 17g be amended to remove the words "the committee." All those in favour of the amendment please indicate. Down. Carried.

Any further amendments to 17g? None. Then shall 17g as amended carry? Carried.

Mr. Chairman: 17h. I gather we have an amendment from Mr. Andrewes.

Mr. Andrewes: I move that section 17h of the Act as set out in section 15 of the Bill be amended by striking out the word "committee" in the second line and inserting in lieu thereof "residents' council" and by striking out "or 17f" in the third line.

Mr. Chairman: All right. Motion understood? Any discussion? Mr. Cooke?

Mr. Cooke: I wonder why we would need the term, "unless the act is done maliciously or without reasonable grounds" in this section. We have eliminated the advisory committee, and surely we are not suggesting that action would be taken against a resident, and we have got a residents' council adviser. Surely this should not be hanging over the heads of a residents' council adviser or

assistant.

Mr. Chairman: Mr. Andrewes? I'll let you speak first.

Mr. Andrewes: I am trying to recall my discussions with legislative counsel on this one. I would assume the section would read:

"No proceeding shall be commenced against a member of the committee or residents."

"No proceeding shall be commenced against a residents' council adviser or a member of the residents' council committee."

Yes. Okay.

"No proceeding shall be commenced against a member of the residents' council or a residents' council adviser for any act done in accordance with section 17e unless the Act is done maliciously or without reasonable grounds."

What Mr. Cooke is suggesting is that the limitations placed on the council and the council's adviser really do not suggest that there would be any recriminations for those rather limited activities that they would be undertaking; is that what you are saying?

Mr. Cooke: Well, I am also suggesting that if you have a residents' council adviser who is picking up significant problems in a nursing home, you are leaving that person to a nursing home saying, "That person is acting maliciously and without reasonable grounds" and getting them involved in a court case.

To me, they should have - that one person at least - should have the freedom. If, in fact, the residents' council adviser - and that is the only person we are really referring to unless somebody is suggesting we are talking about residents - if that person is acting maliciously and that person has been appointed by the Minister, I would assume the Minister could withdraw that appointment.

Mr. Jackson: Mr. Chairman, he is the residents' council adviser. Members are not appointed by the Minister?

Mr. Cooke: Just the adviser.

Mr. Jackson: Just the adviser, yes.

Mr. Chairman: At this point, yes; we have an outstanding amendment which you may recall.

Mr. Andrewes: It is changing hourly.

Mr. Cooke: Just for the purposes of discussion, I move that the words "unless the act is done maliciously or without reasonable grounds" are struck.

Mr. Callahan: Mr. Chairman --

Mr. Chairman: I think I have to take Mr. Andrewes' motion first because you are not actually amending his motion. If his were to pass then you would amend the new amended 17h. Is there anything further on Mr. Andrewes' motion? Mr. Cordiano?

Mr. Cordiano: Would it not be, given the other motion that was stood down, would it not be appropriate to stand this down as well until we have looked at the other motion, because we may have to come back and amend this or where it has no bearing on the residents' council.

Mr. Chairman: The only way I could see it having a bearing...

Mr. Cordiano: I am a little bit confused on that, if it does have any bearing.

Mr. Chairman: Not in terms of membership should not be the problem in terms of the two motions that are outstanding.

Mr. Cordiano: Not the membership. The people that are appointed. If that motion were to carry, the people that are appointed on consent of the council by the Minister, you may have to include those in this section -- those people that are appointed.

Mr. Cooke: They would be members of the residents' council.

Mr. Cordiano: They would be members of the residents' council.

Mr. Chairman: They would all be members of the residents' council so the wording for this would not change. It is probably not my function to tell you, but what you do need to think about is what are the functions which you had passed under 17e, old (e)(2), and are there any of those things that might cause some difficulties? That actually speaks more to the potential motion by Mr. Cooke than it does to the amendment by Mr. Andrewes at the moment.

I have been advised by legal counsel that it is not unusual to have this kind of wording in for other pieces of legislation. It depends; if you do not think the activities of the adviser or the council now are that substantial, then

you probably do not have to worry about it. But if you think that there is a chance that they might run into problems themselves with members in mediation for instance, then that is something you may want to consider. But at the moment, that does not really speak to what Mr. Andrewes has before, which is just dealing with the changes in wording and recognizing the fact that 17f no longer stands as part of the section.

Is there any further debate on Mr. Andrewes' motion?
Mr. Sterling?

Mr. Sterling: Just with regard to the wording of that, the purpose of the section is to provide additional freedom from liability for these groups of people than would be the norm. In other words, if a group of residents take it outside of this Act and totally set up a committee, they would be subject to normal kinds of litigation that would be available.

And I understand this particular section is to give, in addition to whatever protections we all have when we form a committee when we are in that particular situation, more freedom from liability than you would normally have in that kind of circumstance. But the limitation that you are placing on it here is that, I presume, is that an individual who would be on this committee, for instance, could not make outlandish and outrageous charges or act in an extremely negligent manner. Is that correct? Is that what you are doing?

Mr. Johnson: That is correct, sir. If they did that, then they would not have the benefit of the immunity set up here.

Mr. Sterling: And a court would decide whether or not an action followed -- if, for instance, the licensee took an action against a particular individual on that committee, the court would decide whether or not it was malicious or it was without reasonable grounds; is that correct?

Mr. Johnson: Yes, because presumably the adviser, or whoever, would defend on that basis. "You can't sue me; I am immune."

Mr. Sterling: Now, let us say it was taken out and we gave them blanket liability - I mean blanket freedom from liability - then, in effect, a person on a committee could say anything that they wanted to say or make whatever charges they might want to and be free from suit; is that correct.

Ms. Hart: Yes.

Mr. Johnson: That is my understanding, yes.

Mr. Sterling: Okay.

Mr. Chairman: Anything further on Mr. Andrewes' motion? If not, all those in favour please indicate. Down. Motion carries. Mr. Cooke?

Mr. Cooke: I would like to move that the words "unless the act is done maliciously or without reasonable grounds" be struck. And I should point out, Mr. Chairman, we are dealing with restricted numbers of responsibilities, but primarily I would see the responsibilities under (g) on 17e "report to the Minister any concerns and recommendations that in the opinion or in the opinion of the residents' council ought to be brought to the Minister's attention" and perhaps on the one on mediation.

And I should point out to members of the Committee that we are now talking about only four people if, in fact, we accepted one person and, perhaps four, if we accept the recommendation of three people to be appointed upon request.

Mr. Callahan: I simply raise this because by this time it may come up again, but that has already been voted on. Did we not vote on 17h with the changes that were suggested by Mr. Andrewes?

Mr. Chairman: No. We have not taken a vote on 17h as amended as yet. We have taken a vote on an amendment to 17h, moved by Mr. Andrewes. And now we are having another amendment put forward to the same section.

Mr. Jackson: Do you just accept them --

Mr. Chairman: No. I accepted this one first because it was on and I could not accept Mr. Cooke's as a supplemental because it was not dealing with anything Mr. Andrewes' motion was dealing with. Mr. Cooke?

Mr. Cooke: Mr. Chairman, I would just ask that the Committee consider this since the four people - up to four people that we are talking about - are four appointments from the Minister. And surely if somebody acts in an irresponsible way, the Minister will have the ability to deal with that.

However, on the other hand, if, in fact, a nursing home wanted to use this section, it could, in fact, result in a court case, and I am not sure that three volunteers to a residents' council should be subject to that or a residents' council adviser that you have appointed - all four of whom you will have appointed - should be subject to this type of provision. There is substantial control already since you make the appointments.

Mr. Chairman: Any further discussion? Mr. Callahan?

Mr. Callahan: I suppose I wanted to ask this earlier when we are into this discussion. The two words, "maliciously or without reasonable grounds;" they are two different tests. One of them obviously is a deliberate item and the other one it could be a question of negligence. I think that has been indicated.

And the concern that I would have about that is that my indication of, let us say, residents' council receives some information from Mrs. "X" who is not quite accurate in her facts and they rely on that. Can that be considered to be acting without reasonable grounds or with reasonable grounds? I do not know. That gives me a little cause for concern, but I can certainly see "maliciously" because "maliciously" is a deliberate act and it is obvious that the perpetrator is someone who is doing it deliberately and they should, in fact, be precluded from any protection.

But with reference to the other item, I have a little reservation.

Mr. Chairman: It depends how strong the reservation is. It would be --

Mr. Callahan: I am not sure it is strong enough to change my vote; I simply raised it.

Mr. Chairman: It is possible not to vote against this section, but you can amend what has been suggested which would be to reduce the number of words --

Mr. Callahan: No; no. That would be enough...

Mr. Cooke: What is your decision on this?

Mr. Chairman: Ms. Hart?

Ms. Hart: We will not be supporting your amendment.

Mr. Cooke: So these people you are going to be appointing would be subject to this? Anybody in their right mind would not support it. I wouldn't even stand for an appointment.

Ms. Hart: We would disagree on that. I think that you are going a little too far when you say that people who are given extra protection can still act maliciously.

Mr. Cooke: I am suggesting that. I am suggesting that the nursing home is the one that is going to be acting irresponsibly by using this to limit their powers and to limit their ability. I am not suggesting that people should be able to act maliciously. I am suggesting that the

nursing home is going to threaten these people with suit in order to keep their mouths shut. That is what happens now.

Ms. Hart: We take a different view.

Mr. Chairman: Any further debate? If not, all those in favour of Mr. Cooke's motion please indicate. Down. Those opposed? The motion is defeated. 17h as amended, carried.

Do you want to stay any longer this afternoon?

Mr. Cooke: On 17, there is one simple amendment that I had mentioned to you earlier, and you said to move it at the end.

Mr. Chairman: I am sorry; I apologize.

Mr. Cooke: I move that the Bill as amended by this Committee be amended by striking out "residents' council adviser" wherever it appears and inserting in lieu thereof "residents' council assistant."

Mr. Chairman: The motion is in order. Discussion? No discussion? All those in favour of Mr. Cooke's motion please indicate. Carried.

I will not close off debate on 17. I realize we have amendments being proposed back on - which was it? - 17a(2). We were dealing with one Mr. Cooke had proposed, as I recall, and Mr. Sterling had indicated he was going to come back with his amendments which we have before us.

I would suggest to you that procedurally - unless there is an agreement amongst the parties that I am not aware of - we would have to continue to debate Mr. Cooke's motion first before I can take on those other motions and either defeat those or carry them before we take on the next motions from Mr. Sterling, and that would take us some time. So I need to be directed by you as to what you want to do. Mr. Sterling?

Mr. Sterling: Well, I think there are basically three thrusts that are being put forward. First of all, Mr. Reyecraft has -- I believe his motion is in front of you now -- 17a(2).

Mr. Chairman: You have not moved a motion to delete, Mr. Cooke?

Mr. Cooke: Yes, I did.

Mr. Chairman: I am sure you did not. My problem at the moment I think -- I stand to be corrected by the Members. We have done a lot today - my remembrance is that

Mr. Reycraft moved the initial motion changing this section on behalf of the government. Mr. Cooke then moved an amendment to that which was to delete the words "maliciously or without reasonable grounds" and then we started to have the debate on that. Then Mr. Sterling started to talk about different ways of structuring this that might deal with it.

All I am saying at the moment is that I have to deal - unless there is an agreement between the parties to withdraw certain motions - I have Mr. Cooke's amendment before me before we can then come back to another amendment to Mr. Reycraft's motion, which would be presumably yours.

Mr. Sterling: I thought we had our discussions this morning. The problem is that I think the composition of this Committee may change by Monday to some degree, and it would be better to deal with the issue right now.

Mr. Chairman: I am in the hands of the Committee. How much longer would you like to stay?

Mr. Cooke: I do not think we should get into this whole thing on that section today and deal with all the other amendments, and I am not prepared to withdraw my motion.

Mr. Sterling: So let us put it. Let us put it in motion now.

Mr. Cooke: We are not going to deal with the rest of them -- all of the other motions today.

Mr. Sterling: There is only one by Mr. Reycraft.

Mr. Cooke: Mr. Reycraft has got a motion and he is not here.

Mr. Chairman: Let us see if we have a consensus to go past the hour that we have determined prior to --

There was a question as to whether or not we would be meeting Monday. It seems to me that we can fruitfully meet on Monday and therefore we will meet on Monday at 2 o'clock.

The Committee adjourned at 4:05 p.m.

A20N
XC12
- 278

S-83

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

MONDAY, MARCH 9, 1987



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Mitchell, R. C. (Carleton PC) for Mr. Baetz

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Labour:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Campbell, M., Counsel, Legal Services Branch

Johnson, J. M., Director, Legal Services Branch

Sapsford, R. T., Director, Nursing Homes Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, March 9, 1987

The Committee met at 2:00 p.m. in room 228.

Clause-by-Clause
(continued)

Consideration of Bill 176, An Act to amend the Nursing Homes Act and Bill 177, An Act to amend the Health Facilities Special Orders Act.

Mr. Chairman: Call the Committee to order. Our meeting on Bills 176 and 177. We are in the middle of clause-by-clause. It is a Monday, we are in Ontario. There are a number of other reference points I could give you, but I think that is enough for now.

On Thursday past we completed our discussions of 17h. We had stood down a section of 17, 17d as I recall, and we had tentatively discussed going back to an earlier item around the whole question of reporting and an amendment that had been forthcoming potentially from Mr. Sterling. But I am wondering if, rather than going back to that particular stood down section right now, whether it might be better if we just proceed through what we have got left of the Bill and the last little part of it and then go back to stood down sections and you can tell me which ones you would like to then -- how you would like to prioritize those stood down sections.

Would that be all right?

From the Floor: All right.

Mr. Chairman: Everything is all right. It is Monday and away we go.

Section 16 is what we are dealing with.

15a. I will just get everybody's amendments. I do not have any other amendments before me for the rest of 15. Should I have?

Mr. Cooke: I have one for 15a.

Mr. Chairman: Is it a new section?

Mr. Cooke: Yes.

Mr. Chairman: Is it a new amendment? Well, that is where we would go next then would be to 15a.

Mr. Cooke?

On Section 15:

Mr. Cooke: I move that the Bill be amended by adding thereto the following Section 15a.

The said Act is amended by adding thereto the following section (18)(a).

I hope this has been handed out. Has it? Okay, because it was a change from the original that was originally filed. Okay.

"(1) A former Minister, Director, Inspector or Member of the Legislative Assembly shall not accept employment or enter into a contract for services with a nursing home or an organization representing a nursing home which would require him or her to make representations to the Ministry on behalf of the home or the organization until 24 months have expired after the date when the former Minister, Director, Inspector or Member ceased to hold office.

"(2) A former employee or representative of an organization representing nursing homes shall not accept employment or enter into a contract for services with the Ministry until 24 months have expired after the date when the former employee or representative ceased to hold office."

Mr. Chairman: You realize that both of those clauses refers to representing nursing homes. You gave it in the singular in the first and corrected yourself on the second.

Mr. Cooke: Well, I probably just read it wrong the first time.

Mr. Chairman: All right. So you did mean it to be nursing homes? It is the plural then. All right.

That's in order, Mr. Cooke.

Mr. Cooke: Basically, Mr. Chairman, this is a conflict of interest section which would, I think, follow the new type of philosophy that Members of the Legislature I think are embracing. I think it would not be a major problem and has not been a major problem in the past, however, there have been some conflicts and I think, in order to make the system work and to make the system so that the public feels that it is working and that there is no one with a conflict of interest, someone who has worked for a

nursing home and in some cases lobbied the government and then to come work for the government or vice versa, I think there could potentially be a conflict where those former associations could either limit the new staff member of the Ministry or, in the case of someone who goes into the field, could use their former connections in order to get something that they might particularly want.

So I have moved this amendment and I think it would be the first time that something like this has been put into health legislation, but I think it would be a major symbolic move as well as an important move to clean up the situation or allow one to have more confidence in the current system.

Mr. Chairman: Thank you, Mr. Cooke.

Up for the debate?

Ms. Hart?

Ms. Hart: I have a question.

Mr. Cooke, is it your intention only to catch groups that make representations on behalf of nursing homes or also groups that make representations on behalf of nursing home residents advocacy groups, I am thinking of, other than the nursing home association?

Mr. Cooke: Basically the amendment was set out to deal with people who have worked for nursing home organizations, feeling that it is there where the conflict and the potential financial conflict could take place. People that are advocating for residents, obviously, have no financial benefit as a result of advocating for residents.

Mr. Cordiano: Does this include parliamentary assistants, as well, Mr. Cooke?

Mr. Cooke: Members of the Legislature.

Mr. Chairman: Ms. Hart, did you have other questions or comments?

Ms. Hart: Well, it seems to me if you are dealing with conflict of interest you have to catch all of those who have a potential conflict and I do not see how it is different if you make representations on behalf of nursing homes or make representations on behalf of the residents' council. You are still -- the ill that you are trying to catch is that there is this familiarity built up between the two sides and it seems to me that that is a hole in your amendment.

And I would be prepared, or we would be prepared to consider your amendment if it included all those who made

representations on behalf of nursing homes or their residents, but it seems a little one-sided right at the moment.

Mr. Cooke: The difficulty is that conflict of interest legislation, as I understand it, deals primarily with people who would gain financially. Advocates for residents' councils or for individual residents cannot gain financially through any connections that they might have. That is the major difference.

Ms. Hart: Well, I do not think that is so. Advocates are paid -- some advocates are paid not all.

Mr. Cooke: Well, I know, but they are not going to benefit additionally by lobbying the government. They are not going to financially benefit for lobbying the government for increased legislation to protect residents; however, if you have an amendment to the amendment, I mean, that is fine.

Mr. Chairman: Mr. Jackson?

Mr. Jackson: A question for Mr. Cooke, I guess to take it one step further. I guess it is on Mrs. Hart's point.

What about the residents' council or residents' council assistant, why are they not included specifically?

Mr. Cooke: Because there would be no financial benefit at all for them. There is no conflict when there is not going to be a financial benefit gained by the individual.

Mr. Jackson: Well, I thought you made deputations about these committees being at arm's-length and nervous about the Ministry making appointments of individuals who were there to basically be watchdogs of the nursing home and advocates for the residents and yet there could be all sorts of pressures, as you referred to them, put on residents' council members or the residents' council assistant. I do not see the consistency in it.

And my second question is: Have you checked with OPSEU about this or any other of the unions that may be represented?

Mr. Cooke: No, I have not.

Mr. Jackson: And have you checked legal counsel, if in any way, this is in violation of the Charter? I mean if I want to limit my rights as an MPP upon my retirement, that is my business. You know, I might willingly do that in Committee or in the House, but do I have the right to do

that for someone who is currently working in a nursing home?

Mr. Cooke: This was prepared by Legislative counsel and it was reviewed, as I understand it, by the Ministry Staff as well. That is why there are changes here from the original draft because the Minister and the Ministry Staff reviewed it.

Mr. Jackson: Was that a yes or a no that it is in violation of the Charter?

Mr. Chairman: Are you asking a direct question of somebody else, Mr. Jackson, for instance legal counsel?

Mr. Jackson: Well, I was asking Mr. Cooke if he had asked the question and he indicated that he did not specifically ask the question. He said that someone else had prepared it for him or reviewed it for him.

Mr. Cooke: Actually the matter was raised and my understanding was that it was not in violation.

Ms. Hart: Perhaps I might reply to that.

Mr. Chairman: Ms. Hart?

Ms. Hart: Not specifically about the Charter of Rights, but yes, it was reviewed with the Ministry and for that reason it was broadened to include as many people as possible.

It is hard to argue against a piece of legislation that says that people in conflict shouldn't be caught somehow. The Minister's point of view, however, is that it is not broad enough, that it should also include all of those who make representations.

Mr. Chairman: Mr. Cordiano?

Mr. Cordiano: The point I would simply like to make is that perhaps areas such as this should be dealt with in a more comprehensive fashion. One can make the argument that if you are looking at it from this perspective that indeed legislation of some kind can be brought in to deal with other areas as well, other ministries for other pieces of legislation where there are conflicts.

I would think that to deal with it on a piecemeal fashion as you are suggesting in this Act, I would rather have the comprehensive policy and have that dealt with at a later date perhaps, if we are going to move in that direction, but you are entitled -- that is my point of view.

I think you are dealing with each area that might come up as a concern and there is no question that you could

raise concerns in a number of other areas as well, and perhaps there should be something to be dealt with for lobbyists in general and that is something that I am sure that will be taken into consideration perhaps.

The Chairman: Mr. Davis?

Mr. Davis: Mr. Chairman, instead of asking questions I just want to say that this is -- it may be novel to Mr. Cooke but it certainly could set all kinds of precedents where -- and I am just talking right now about civil servants or, for example, Members of the Legislative Assembly who, after a period of terms for either their own personal reasons decide not to seek election again or defeat it, will find themselves in positions where there are certain avenues not open to them, and I would assume that if we are going to do it here then maybe we should suggest there are other areas that MPPs become involved and civil servants where they should not have the same opportunity to apply for positions and I would feel and I feel that it is a kind of legislation that it is not required in law and that the onus lies with the Minister or his staff in dealing with those kinds of individuals who come before him to make petitions.

I mean, I could say tongue and cheek that maybe Mel Schwartz would never go in to the insurance industry because of the kind of activity he sat in, yet that might be an area that he would like to go.

Mr. Chairman: He has had some good offers.

Mr. Davis: I would not doubt it.

Mr. Chairman: Out of province, no doubt.

Mr. Davis: I just find this a difficult piece of amendment by Mr. Cooke and I think that it becomes the responsibility of the Minister and his Staff to make sure that the kinds of things Mr. Cooke feels may happen would not happen and that is why we elect the government. We have not got an elected government right now, but that is why we do it.

Mr. Cooke: Perhaps it needs some clarification.

Mr. Callahan: Probably would if we were dealing with regulation.

Mr. Chairman: Any further discussion on Mr. Cooke's motion?

Seeing none, I take the vote.

All those in favour of Mr. Cooke's amendment to create

a new section 15a please indicate. Down. Those opposed? Motion is defeated, six to one.

Mr. Chairman: 16.

On section 16:

The Chairman: I do not think I have any further...

On section 19:

We are now moving to section 19. I have no amendments to 19 proper, I do not think. My first amendment, I think, is to 19a.

Ms. Hart: Are we here?

Mr. Chairman: Yes, we are here now.

Since there are no amendments to section 19, is there any discussion?

Mr. Cooke: This is the penalty section, right?

Mr. Chairman: Yes. The first amendment I have from you I think is 19a; am I correct?

Mr. Cooke: Right.

Mr. Chairman: Right.

If not, then shall section 19 carry? All those in favour? Down. Those opposed? It carries.

Mr. Chairman: 19a. Mr. Cooke?

Mr. Cooke: I move that section 19a of the Act as set out in section 16 of the Bill be struck out and the following substituted therefore:

"19a (1) Any person who contravenes any provision of this Act or the regulations, except subsection 12(1), and any director or officer of a corporation who authorizes or permits such a contravention by a corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for the first offence and not more than \$10,000 for each subsequent offence.

"(2) The maximum penalty that may be imposed upon a corporation for the first offence is \$10,000, and for each subsequent offence is \$50,000 and not as provided in subsection (1) and (3) notwithstanding subsection (1) where a person,

director or officer is convicted of an offence involving the health, safety or welfare of residents, the minimum penalty shall be \$5,000.

Mr. Chairman: Thank you.

Mr. Cooke, that is in order.

Mr. Cooke: The difference in this proposal and the one that is in the original Bill is there is a couple of differences. One is that corporations will be treated differently and the penalties here would be \$10,000 and \$50,000 which is not unlike that proposed when we dealt with Bills 54 and 55 where there was a differential of the drug legislation for corporation versus individual pharmacists.

And the other difference is that where there is a substantial violation of the Act that puts at jeopardy the health, safety or welfare of residents, there would be a minimum fine of \$5,000. That obviously to recognize the significant violation of the Act and the fact that someone's health or perhaps even life could have been put at risk as a result of those violations.

Mr. Chairman: Thank you, Mr. Cooke.

Discussion. Ms. Hart?

Ms. Hart: Mr. Chairman, the major difficulty that we have with this amendment is the concept of a minimum penalty. The difficulty with that is that it fetters the judge's discretion in such types of offences, potentially for failing to report abuse, a minimum penalty of \$5,000 is a pretty hefty one. And in our experience what happens is that the judges, when they are reluctant to impose a minimum penalty and must do so by the statute, then fail to convict and we think it would be counter-productive to have such a minimum penalty in the Act.

Mr. Cooke: May I ask the Parliamentary Assistant if she agrees with the differential penalty between corporations and individual homes that are not incorporated, the one being ten and fifty thousand as opposed to five and ten?

Ms. Hart: I have not enquired about this, but I am wondering about the amounts and whether they are within the Provincial Offences Act. I have a concern about that.

Mr. Cooke: These numbers were taken actually from the original proposal in the drug legislation.

Mr. Mitchell: Which was amended.

Ms. Hart: I am not familiar with that so I do not

know the answer to that question.

Mr. Chairman: Perhaps legal counsel can advise on that. I do recall that these were the initial figures we started off with in the drug bills, were they not, as I recall?

Mr. Cooke: They were not changed because they had to be changed, they were changed because the Committee decided...

Mr. Chairman: Right.

Mr. Callahan?

Mr. Callahan: I just wanted to concur with what Ms. Hart has said but also the fact is, as I understand it, this statute to a large degree is one that does not require a mens rea. At the very least, it probably requires a form of not strict liability but somewhere in between that and mens rea and if you are imposing a minimum penalty, that is a rather stringent penalty for a statute of that nature.

Normally minimum penalties, I find them rather offensive and for the reasons Ms. Hart has indicated, but quite apart from that, you have got a statute where you are not talking about something akin to a deliberate act, it could be a breach of something less than a deliberate act and that person could wind up with a minimum \$5,000 penalty and I would suspect that justices of the peace or judges hearing that would probably not convict and, if they did, then of course, they are stuck, there is no latitude whatsoever.

So I would concur with what she said.

Mr. Chairman: Thank you, Mr. Callahan.

Any discussion? Mr. Cooke?

Mr. Cooke: I am not sure I understand because we are not talking about offences where it might occur under other statutes, we are talking about offences where peoples' lives are being put at risk. And the types of fines that are now being dealt out by the courts are absolutely ridiculous, they are just simply a licence to break the Nursing Home Act and that has been the problem. The fact that the government is proposing that the ceilings be raised is fine, but the old ceilings have never been used, so why would the new ones be used?

That is why the minimum fine makes sense, that there be some direction given to the courts and a fine of \$200, a fine of \$50 for violating the Nursing Home Act, or putting someone's life at risk is hardly an adequate fine.

So I think that the proposal that the government has in this area basically just makes it look like there is going to be tougher fines by raising the ceiling, but when there is no floor, it is absolutely and totally meaningless because the ceiling has never been used now.

Mr. Callahan: Let me respond to that, Mr. Chairman.

Normally the question of penalty is something that a judge himself addresses and it is based on the seriousness of the incident or the lack of seriousness of the incident. The most serious being at the high end and perhaps the less serious at the low end and something in between being partially serious and partially not serious.

Mr. Chairman: Oh. Oh, that is how it works.

Mr. Jackson: This comes from legal training, does it?

Mr. Callahan: All I am saying to you is that if, you know, we do still practice -- we do still, I believe anyway, in the democratic society, have access to the courts where the good and bad of a person can be put forward and the seriousness or less seriousness of it can be put forward. Minimum penalties really allow the judge to stay home and counsel for the defence and the accused because nobody has to make any submissions once an appearance is entered.

Mr. Cooke: Well, that in itself is worthwhile then, passing this amendment.

Mr. Callahan: I thought you might say that.

Mr. Cooke: You are a lot of help.

Mr. Callahan: However, minimum penalties certainly can have the other effect, as well, that is that they can cause a sense of unfairness in the eyes of many people and any law that gains that reputation suddenly becomes a law that is no longer respected either by individuals out there and, in some respects, is avoided by a judge, I guess.

I would say that the penalties that are there certainly show the seriousness of the nature of this Act by the increases and if the decision that is made by a judge is not appropriate, there are always avenues of appeal. I prefer that to the minimum penalty provision.

Mr. Chairman: Why did we ever get rid of Q.C.s? I do not know.

Mr. Jackson?

Mr. Jackson: Just help me. I should know this, but

what provisions are there for old age homes or the homes that are operated by the municipalities or the regions? What penalties are existent in that legislation that might be parallel to the penalty structure we are creating here?

Ms. Baldwin: I cannot answer that question. I do not know if my colleague from the Ministry can.

Mr. Campbell: Not off the top of our heads, I could not right now.

There are a series of statutes which deal with a series of different types of establishments from homes for the aged, of course, nursing homes and other forms of establishments. We would have to check each particular statute to see what sanctions are imposed and the amounts of the penalties that might be set - perhaps supply the information to that effect tomorrow for you.

The Chairman: Mr. Jackson?

Mr. Jackson: From my limited understanding of practice in Ontario is, is that our track record before the courts when pursuing such matters has been pretty poor. Would the Parliamentary Assistant share that perception with me?

Ms. Hart: I cannot, I do not have enough knowledge to be able to share that perception with you. What I can say is that there have been a number of technical difficulties with convictions and they dealt with such things as evidence gathering and that led to some of the amendments that we are about to consider.

Mr. Jackson: Well, you know, I am trying to listen carefully to what Mr. Cooke is saying with respect to what he feels the impact of these revised numbers will have and given that I am not seeing any evidence within the Bill of greater effort and emphasis on examination, in preparation for a court presentation, I am having difficulty, even to the point where, with a higher penalty, certainly the courts would be less sensitive to the government who is pressing the charges than they would be to the nursing home operator or the corporation.

So I am having great difficulty with the effect that we are going to have with increasing these numbers and I wish -- Does someone recall what the numbers got revised to under the..? - you knew I was going to ask that question - Bills 54 and 55?

Mr. Chairman: They were brought downward.

Mr. Jackson: Oh, I remember that.

The Chairman: But I cannot remember to what figures, I am sorry.

Mr. Jackson: I thought it was 10 and 20 was what is fixed in my mind.

Mr. Chairman: Possibly. It does not stick in mine, unfortunately. Anybody else who was here? No?

Mr. Callahan: Mr. Chairman, I think those are the penalties in 54 and 55 as I recall. Certainly the \$5,000, \$10,000 for the first and second offences and I believe there was also an additional amount there for corporate as there is here.

Mr. Cooke: There is a difference between corporations. I forget what the minimum is.

Mr. Callahan: I am reasonably certain that is the case.

Mr. Cooke: Would it be safe to say that if you did have sections 1 and 2 that judges would at least differentiate in the meting out of fines between corporations and individuals or individual nursing homes that are not incorporated, so that there would be some recognition between the large, the big guys and the larger fines that are required in order to build into the system some real penalties?

Mr. Chairman: Ms. Hart?

Ms. Hart: The difficulty I have with that, Mr. Cooke, is that I am told that something like 99 per cent of all nursing homes are incorporated.

Mr. Cooke: So that basically it would result in...

Mr. Jackson: You are getting into something -- I do not know, they would have to have the capital base to support it.

Mr. Chairman: Would it be useful for you to wait - before taking a vote on this - to get a hold of 54 and 55 as they became statutes so you would know what some reference point is?

Mr. Jackson: If Mr. Cooke wants any support from me on any elements of this, I have got to have a little more information. I am having difficulty with it. Unless he wants to proceed now on this basis.

Mr. Cooke: Well, the point that the Parliamentary Assistant makes is that if 99 per cent of the nursing homes are incorporated, then basically the choice that we have

here is the 10 and 50 or the 5 and 10.

Mr. Cordiano: What exactly are you trying to accomplish by distinguishing between incorporated and non-incorporated?

Well, size or is it, you know, I mean or is it legal liability?

Mr. Cooke: Well, the problem has been that the fines have been so small...

Mr. Cordiano: I understand that.

Mr. Cooke: ...that it is to your advantage to break the law.

Mr. Cordiano: I understand that, but the point between the differential...

Mr. Cooke: No, it is true.

Mr. Jackson: It is not.

Mr. Cooke: You do not have to accept it, it is a reality.

Mr. Jackson: Every case has been thrown out, for goodness gracious sake.

Mr. Cordiano: No, I understand what you are trying to get at, Mr. Cooke. What I am saying is you have got the differential between incorporated and non-incorporated. I mean, what are we talking about? It is not size you are trying to address here.

Mr. Cooke: That was the purpose, yes.

Mr. Cordiano: Yes, okay. So why do we not look at it from a different perspective then, if you are looking at size?

Mr. Cooke: If that is possible, yes.

Mr. Chairman: Ms. Hart?

Ms. Hart: The reason that we did not break it down was because so many of the homes are incorporated but if you break it down in any other manner between size of corporation, then you are surely into a Charter of Rights problem of discrimination and all this kind of thing. I think we would not want to do that without a lot more thought.

Mr. Cooke: Let us just vote on this.

Mr. Chairman: I told the clerk I would try to buy him enough time to get back with the report on the other legislation, but we can always use the statutes here before us.

Mr. Jackson?

Mr. Jackson: If a nursing home operator has incorporated and I have a reference point from of a Jamaican immigrant, a lady who is operating a nursing home, and I think she has 16 residents in this large home. So she would be subject, on a second offence, to a \$50,000 fine just because she has received advice from her accountant to incorporate.

Mr. Cooke: That is not exactly what the amendment says, Ken.

Mr. Jackson: What does the amendment say?

Mr. Cooke: Well, read it. "May be imposed".

Mr. Callahan: Looking over ten.

Mr. Chairman: Here we are. 54, 55, I will just read this: "Contravention, any Director..." is five to ten and then the maximum penalty that may be imposed under a corporation is \$50,000 and under 55 it is identical, it is 10,000 and no differentiation on the first and second and a maximum of 50.

Mr. Cooke: Those Bills dealt with financial arrangements primarily of pharamcists and drug companies. Here we are dealing with peoples' lives, but...

Mr. Chairman: Any further discussion? Seeing none --

Mr. Cooke: Maybe, just so that -- because there are a couple of issues in here. Maybe just deal with 1, 2 and 3 separately?

Mr. Chairman: Certainly.

So we will be voting on Mr. Cooke's motion in parts. We will deal with his new 19a sub (1) first and then sub (2) second and then sub (3) third. Three separate votes. All right.

All those in favour of Mr. Cooke's 19a sub (1), please indicate. Down. Those opposed? Defeated.

Sub (2). Those in favour, please indicate. Down. Those opposed? Defeated.

Sub (3). All those in favour? Those opposed?
Defeated.

Seven/two. The motion is defeated.

Mr. Cooke: Exactly the same as the government motion.

Mr. Chairman: It is not exactly the same. It mentions directors and things which are not in the government's motion.

So 19a as listed in the Bill...

Mr. Callahan: It probably covers anything. It says: "Any person".

Mr. Chairman: So 19a as listed in the Bill carry?
All those in favour? Down. Those opposed?

It carries.

19b, a motion from Mr. Cooke on sub (4).

Because it is just a small wording in the memo, why do we not just deal with 19b in its entirety. Mr. Cooke moved that...

Mr. Cooke: I do not think that my amendment is required.

Mr. Chairman: All right. The amendment is withdrawn.

19b with no amendments. All those in favour, please indicate? Down. Those opposed? It carries. 19b.

The Chairman: Section 17. Just a minute. It has been recommended wisely by legal counsel that we basically stand down 17(2) until we have dealt with other things because it deals with regulating powers and we may want to come back to that after we have been through some other matters in case there are some subsequent powers we wish to put in and some we would like to delete.

Two smaller matters on 18 and 19, we might as well leave until we have finished the other matters.

So we can now go over to the matters which have been stood down.

All right. So we have stood down definitions. We will keep those stood down, one would presume, until just before the end.

Is it my understanding that we still do not wish to proceed with the section 2 of the fundamental principles,

bill of rights debate? You want to leave that until later, as I understand it, until tomorrow. Okay.

What is the next stood down section after that, Mr. Carrozza?

The Clerk: Section 13.

On section 13:

Mr. Chairman: Section 13 would be the next section which has been stood down, I am advised.

Mr. Cooke, did you have a motion on 4g, a new 4g that we stood down?

Mr. Cooke: Yes.

Mr. Chairman: We are dealing with a new 4g.

Mr. Reycraft: What?

Mr. Chairman: 4g. And it is just being circulated to you now.

Mr. Jackson: Section 4?

Mr. Chairman: I am sorry, it will be the new section 4g of the Bill. We have a 4f, you will notice, on page 7 of the Bill and Mr. Cooke stood down a 4g to do with public meetings around submissions and you are introducing a new one?

Mr. Cooke: Right.

Mr. Chairman: Thank you. Why don't you read it into the record.

Mr. Cooke: Okay. I move that section 4 of the Bill be amended by adding thereto at the end as section 4g of the Bill.

"4g (1) The Director shall not issue a licence, undertake to issue a licence under section 4a, reissue a licence under section 4b or approve and issue or transfer of shares under section 4c unless the public has been given notice of the request to do so and an opportunity to make written and oral submissions in accordance with this section.

"(2) The Director shall not renew a licence unless the public has been given notice of the request to do so and an opportunity to make written submissions in accordance with this

section.

"(3) Without limiting the requirement of the Director to give the public an opportunity for oral submissions under subsection (1), the Director shall ensure that for each nursing home at least once in every five years the public is given notice of the request to carry out a matter described in subsection (1) or (2) and an opportunity to make oral submissions with respect to it in accordance with this section.

"(4) Where the opportunity for oral submissions is required under subsection (1) or (3), the Director shall cause a public meeting to be held concerning the request before making a decision and that meeting shall be held in the area where the nursing home is located, notwithstanding subsection (4) where the public meeting concerns an issue or transfer of shares under section 4c in respect of a licensee that owns or controls more than one nursing home and those nursing homes are located in different areas, the Director shall determine where the meeting shall be held.

"(6) If the Director is not able to chair the public meeting, the Director shall designate a representative of the Ministry to do so and that representative shall prepare and give the Director a written report of the proceedings.

"(7) At least 30 days before decision in relation to a matter described in subsection (1) or (2) is to be made, the Director shall cause a notice inviting submissions to be published in a newspaper having general circulation in the area where the nursing home is located or intended to be located and that notice shall;

"(a) contain an explanation of the request being made and the reasons for it;

"(b) state that any person may make written submissions to the Director concerning the request, and;

"(c) state that the Director will consider any submissions before making a decision.

"(8) Where the Director is required to hold a public meeting, the notice required by subsection (7) shall be published at least 30 days before the public meeting is held and shall also invite

any person interested in making oral submissions to attend the meeting and express his or her opinions and recommendations concerning the request.

"(9) Where the request concerns an existing nursing home, the Director shall give a copy of the notice described in subsection (5) to the licensee and the licensee shall cause it to be posted in a conspicuous place in the nursing home.

"(10) The Director shall consider any submissions received under the section before making a decision concerning a matter described in subsection (1) or (2).

Mr. Chairman: Thank you, Mr. Cooke.

Mr. Cooke: Mr. Chairman, what this would do for the first time is open up the process for renewing licences, issuing new licences or the transfer of a licence.

There have been a number of instances in Ontario, the last of which I believe was in Tavistock where a home was purchased and the proposal was that the residents would be relocated.

The opportunity for the public to actually participate in this process is very limited under the current law. What this amendment would do would allow on the renewal of a licence every year, the opportunity for a notice and then the opportunity for written submissions to be made to the Director and the Director would consider those written submissions before making the decision.

If there was a sale or the transfer of a nursing home licence or the establishment of a new nursing home licence, there would automatically be a public meeting in the area where the nursing home was to be located or is located.

And for those that are just regular renewals in addition to the yearly opportunity to provide written submissions, there will be the opportunity every five years to have a public meeting.

I think this amendment will do two things: It will bring the community into the nursing home process; it will allow the community to have a better opportunity to understand the process and to comment on it and to understand some of the problems that exist in nursing homes.

I think it will also build an additional process or additional step of accountability, in that nursing home operators will be sensitive to the fact that there will, at

some point, be a public meeting; that their record will be reviewed publicly and that local media and press will cover those public meetings. And if they are providing good service, that will result in good comment; and if they are providing poor service, then it will result in negative comment which, I think, by opening up the process, builds in more community accountability.

And I think if this amendment is carried, it will be a major step forward to allowing the community to participate in this important process.

Mr. Chairman: Thank you. Ms. Hart?

Ms. Hart: Thank you, Mr. Chairman.

The history of this is that the government responded to the submissions of various interest groups requesting this participation by the community at the various times in the licensing process and this amendment that Mr. Cooke has put forward is one that, I think is fair to say, was jointly drafted.

We agree that every five years there should be -- every year there should be an opportunity for written submissions, but every five years there should be opportunity for public oral input.

It is, in our view, if this amendment is passed, a welcome step forward and we hope to see the community participate in this process and open it up as we had intended it to be.

Mr. Chairman: Thank you, Ms. Hart.

Mr. Jackson?

Mr. Jackson: A few questions, Mr. Chairman, and that is: I am not a hundred per cent clear about how the government, on what basis they are going to trigger the public meeting. It says they do not have to as long as at least one is done every five years.

Ms. Hart: If I might respond to that?

Mr. Chairman: Yes.

Ms. Hart: The reason that was drafted that way, from a practical standpoint, if there had been a transfer at some point in the five years, we viewed it as unduly onerous to the operator.

For example, if the transfer hearing had been held in year four, to have the public meeting again in year five, since they already would have gone through that in the

transfer proceedings. So it was drafted so there must be at least one public meeting in that period.

Mr. Jackson: But it leaves it open for others.

Ms. Hart: Yes. Yes, it does not preclude it.

Mr. Jackson: But I guess what I am asking, on what basis are they going to make the decision, other than the time, as to what constitutes, what shall be a public meeting and what shall just be an opportunity to receive written submissions?

Mr. Chairman: Mr. Cooke.

Mr. Cooke: Well, as the Parliamentary Assistant has said, there will be a public meeting every five years. I guess the first five years, your question is relevant, because there is going to have to be a schedule drawn up to phase it in over the five years. You could not do all 300 nursing homes in the first year.

So I gather about 20 per cent of each of the homes will be done each of the next five years and then there will have to be a public meeting each five years after that.

Mr. Jackson: What is the Ministry's commitment? I mean we have established that we are under-staffed in terms of qualified inspectors. What is the Staff commitment here with respect to hiring the necessary personnel to implement this section?

Ms. Hart: I cannot give you a specific hiring plan but--

Mr. Jackson: Well, no I am not asking that.

Ms. Hart: --if we are obliged to hold these hearings then we have to have personnel to staff them.

Mr. Jackson: Okay. This section is only as good as the government's ability to call for the public meetings. I mean, we are currently in a problem with Bill 51 over -- simply because of rent legislation and having facilitated meetings.

And to what extent is this going to limit, in any way, the - I just foresee a problem, if you are not prepared to higher the necessary staff in order to implement this section - that it not work, because you say we are eight months behind now and, yes, you have a valid case and, yes, transferring of residents is a significant matter which we feel there should be a public hearing on, but we cannot get any personnel there to conduct the meeting. And there is current examples now where we have created legislation but

you are not sensitive to the budgets.

I just want to know what thought went into this or are you just looking at in terms of a statement, yes, we agree with public meetings but if we only have a few a year, then to what extent are we committed to having public meetings?

Ms. Hart: A great deal of thought went into this and that is why the time period was changed from Mr. Cooke's original of three years to the five years because it was felt by the Ministry officials that that was do-able.

Mr. Jackson: And can I ask if the Statutory Powers and Procedures Act will prevail in those hearings?

Ms. Hart: Well, it is a public meeting it is not a hearing--

Mr. Jackson: Or public meetings?

Ms. Hart: --so I would suspect the answer is no. In fact I know the answer is no.

Mr. Chairman: Mr. Davis?

Mr. Davis: Thank you. Perhaps Mr. Cooke might comment on a question I would like to ask about this.

I recognize that some of the concern of providing certain services in nursing homes has to deal with funding, provincial funding and so on, and Mr. Cooke, if there is a public hearing and one of the concerns raised by the public that is there is the quality of care for what they call heavy care patients and then in response to that the owners of the nursing home indicate that part of their problem is a lack of provincial funding. How does that help the nursing home person to have a public hearing when there is no funding for the individual to respond to the particular needs that have been identified?

Mr. Cooke: Well, it would seem to me, Mr. Davis, that since we passed another section of this legislation that is going to make the financial statements, the profit and loss and expenditure sheet available to the public, that we will be able to tell whether the nursing home has a financial problem or not.

Mr. Davis: If the nursing home indicated that it was their understanding that the rationale for the concern that was expressed in the public hearings was not enough provincial money, how does that become part and parcel of the objective of doing something, of accomplishing something?

Mr. Cooke: Well, if that is a fact of truth, it will

be demonstrated and supported by the financial statements and if in fact that is the truth, then the accountability is there already, both for the nursing home, if they are taking profits out and still not providing adequate service, or if the nursing home is under-funded and the Ministry is not providing adequate service, then there is accountability for the Ministry as well.

Mr. Davis: So what I hear you saying, Mr. Cooke, is that the nursing home, if they had a small profit, should have used the profit to meet the needs even though it is the government's responsibility for not adequately funding?

Mr. Cooke: I did not hear myself say that.

Mr. Davis: Well, you certainly suggested it.

Mr. Chairman: Is that your answer, Mr. Jackson?

Mr. Jackson: Well, the point I guess that Mr. Davis is trying to illustrate is that, you know, perhaps this is not such a bad thing. If we are going to be able to take those nursing homes that are losing money and put them into a public forum and those facts will then become made known, but in nowhere does that process provide a benefit to the residents because all we will have achieved is an understanding that in that given home that in order to meet the needs of the residents and the quality of care as established by that nursing home, based on the types of individual needs of their residents, that they are in a funding crunch and all that does is become a statement.

And somehow this Bill should be tightened up to the extent that a resident's assessed needs are going to be met and that, and as you well know, my interest in having the Ministry a co-signature to a contract, so that at these public hearings the government or the Minister, as the representative, can be held somewhat accountable for the fact that the assessed needs of the residents are not being met and that there is no fat in the budgets, as it were, in a given nursing home, and that in fact a solution is that there must be additional funding.

So it is a double-edged sword and, however, the legislation still lacks a certain amount of teeth with respect to having the residents' assessed needs met within that institution and holding the Minister accountable in some sense, or the Ministry, during public hearings.

Mr. Chairman: Is that a question?

Mr. Jackson: That is a statement.

Mr. Chairman: This section does not deal with outcomes, it deals with just the process. We have not, as

yet, as you so mentioned...

Mr. Jackson: No, but if you go with Mr. Cooke long enough you assume there is only going to be one outcome and I am simply trying to apply some balance here, that in some instances in Ontario there will be two sides to the story and that may not necessarily be all that bad, that the public realizes that the differentiated funding levels in this province are creating problems and that the differentiated level of individual need is creating, and the ghettoization of that need in certain institutions is creating a problem. And maybe these these public hearings will bring that to light.

But then again that is all they are going to do is become a public forum for both sides to argue points with the Ministry perhaps sitting at arm's-length and I think that it is unfortunate that they can get away with sitting there at arm's-length.

Mr. Chairman: I am sure you are going to speak to that when we get to the appropriate section.

Mr. Jackson: Yes.

Mr. Cooke: What section is it?

Mr. Chairman: Well, I do recall seeing some amendment that had something to do with that which has been stood down, if I recall.

Anything further on Mr. Cooke's section 4g? Seeing none. All right.

I will take it as one vote unless I am instructed otherwise. All those in favour of Mr. Cooke's motion to create a new 4g, please indicate.

That motion carries.

So our next one that was stood down, I think, Mr. Cooke, was your section 6a.

Mr. Cooke: Mr. Chairman, I will not be moving that motion. This is the second part of the public hearing process, but since we have the first attempt that was just passed, I think that is a major step forward and we will withdraw this one.

Mr. Chairman: Thank you. Mr. Cooke's earlier new motion was section 6a. He is saying that he is now withdrawing that because of the amended motion which we just passed with 4g.

Our next stood down section is section 13, page 11 of

the Bill, and it was moved by.. ? Oh, we stood that down because of the words "residents' council advisor", as I recall.

Ms. Baldwin: Hold on for just a minute.

Mr. Chairman: We were not sure.

Ms. Baldwin: Yes. Since you no longer have the "residents' council assistant" and those inspection powers, that section, I take it, is no longer necessary.

Mr. Chairman: This essentially is giving powers of inspector or some powers of an inspector...

Ms. Baldwin: Inspections.

Mr. Chairman ...inspections to the residents' council advisor. You will recall that we struck out those powers for the advisor or assistant, whatever we are calling that position now.

Is it assistant? Yes, we agreed on assistant and, therefore, this section no longer applies and it is no longer a part. So we need a motion for deletion.

Ms. Baldwin: A vote against.

The Chairman: Or a vote against, yes. Thank you. Just vote against the motion and then we will not have a contradiction in the Bill.

All those in favour of the Bill, please indicate? All those opposed? There is always one you cannot get in the line. Those opposed?

The section will be struck. Section 13 will be struck and the re-numberings, of course, will ensue.

Mr. Cooke: I had an amendment to section 13, but I am not sure whether we need this amendment now that we are going back over things that have been stood down and I am not sure what has been carried and what has not been carried. Did this one carry, the one about investigating promptly; is that the one you are referring to?

Mr. Chairman: This is section 13 of the Bill.

Mr. Cooke: This is section 13 of the Bill and section 16 of the Act.

This is the appointment of inspectors. Was that carried or no? Okay.

Mr. Chairman: No, it was not carried.

Ms. Baldwin: Maybe I could offer some clarification here.

Mr. Chairman: Ms. Baldwin, do help us.

Ms. Baldwin: The original Bill, section 13, was amending section 16 of the Act and it was dealing with the issue of the advisor. Section 16 of the Act, in general, deals with appointment of inspectors.

Mr. Cooke had a motion that was also amending section 16 of the Act, so that it was placed in section 13 of the Bill and that is the motion that he is referring to now.

I think that both subsections of his motion are independent issues of what it is that you just voted against, so there is no reason why he cannot move it, that I can see.

Mr. Cooke: I was just wondering, I thought we had passed an amendment in another section of the Bill someplace that talked about the Minister or the inspectors having to investigate complaints promptly, but maybe I am incorrect.

Ms. Baldwin: No, he is correct about that.

Mr. Chairman: I think you are correct about that as well.

Mr. Mitchell: Section 4, I believe that was.

Mr. Jackson: I am glad you guys are not lost because I am.

Mr. Chairman: 17b(a), I am told by Mr. Sapsford:

"Where the Director receives a report from any source that gives the Director reasonable grounds to believe that the health, safety or welfare of a resident may be at risk, the Director shall cause an investigation to be commenced and the nursing home in which that resident lives to be visited forthwith..." was carried. Is that...

Mr. Cooke: Okay, I know what that was dealing with. This was a separate motion. I guess this motion simply makes it clear that inspectors are required to investigate all complaints forthwith. So perhaps it is still -- it is probably not an important amendment, but it makes it clear that this is one of the responsibilities of the inspector.

Mr. Chairman: I am just a little confused about what I have before me. I see in legal counsel's hand a motion, section 13 amending subsection 16(1) which has a couple of

sections to it. I have one which has four.

On section 13:

Mr. Cooke: Do you want me to read it, so that...

Mr. Jackson: I do not have a copy of it at all.

Mr. Cooke: It was in the original package.

Mr. Jackson: I have got my original package in front of me.

The Chairman: Would you read it into the record, anyhow.

Mr. Cooke: Section 13, subsection 16 (1) and (3) of the Act. I move that section 13 of the Bill be struck out and the following substituted therefor.

I think the other -- since we have dealt with some of this, (1) was defeated. Okay. So it is just the second section. Section 16 of the said Act is amended by adding thereto the following subsection:

"(3) It shall be the duty of inspectors appointed by the Ministry to investigate all complaints received by the Director forthwith and in accordance with the procedures prescribed by the regulations."

Mr. Chairman: All right. So looking at that initial package that we had, Mr. Jackson, getting back to your concern.

Basically we are not dealing with the first one which has been voted against?

Mr. Cooke: I now understand exactly what this is, after going through this three times.

I will read the entire thing into the record and then it will be very clear, if you have a copy of the original Act in front of you.

"13.- (1) Subsection 16(1) of the said Act is amended by striking out the word "may" in the first line and inserting in lieu thereof "shall".

"(2) Section 16 of the said Act is amended by adding thereto the following subsection.

"(3) It shall be the duty of inspectors appointed by the Minister to investigate all complaints received by the Director

forthwith in accordance with the procedures prescribed by the regulations. "

It does two things. It makes it clear the responsibility of the inspector to investigate all complaints promptly and it also takes out the permissive section that says: "The Minister may appoint inspectors ", and says that "he shall appoint inspectors".

Mr. Callahan: That is not necessary.

Mr. Chairman: Ms. Hart?

Ms. Hart: A couple of things about this. The scheme of the Act is that the duty is on the Director to investigate complaints and we passed one section already that talked about - what was that? - 17b(2): "The Director shall cause any complaint to be investigated forthwith after receiving it".

Also there is another proposed government amendment, 17a, and set out in section 15 again, saying: "The Director shall cause any report made to be investigated forthwith after receiving it".

It seems to me that by putting, I guess what it is an additional duty on the inspectors, when they report to the Director, I mean they really -- the point person in the scheme of the Act is the Director. It seems to me slightly unfair to put it on people who are merely employees of the Director who really do not have of the discretion or powers of the Director in order to carry out because the decision-making resides in the Director.

And that is the difficulty that we see in this section. It does not mean -- who can argue with wanting complaints to be investigated immediately. We put that in the Act several times or proposed to. It just seems to water down the responsibility by giving it to the inspectors as opposed to the directors.

Mr. Cooke: I think the original purpose of this was when we were going through the entire proposed amendments, we were trying to reinforce in several sections of the Bill the fact that complaints that come to the Ministry have to be investigated promptly and I think this is one of three areas where I proposed it would be in and you proposed one or two yourself.

So this was just to reinforce that obviously the Director has responsibility but the inspectors have responsibility as well and also the other part of the amendment makes it clear that it is not the Minister "may appoint inspectors", the Minister "shall appoint inspectors".

I do not think they are major amendments, but they were all combined together to reinforce one another that the complaints were going to be investigated promptly.

Mr. Chairman: Any further discussion?

Ms. Hart?

Ms. Hart: In our view there is enough in the Act to ensure that the complaints are investigated immediately and this we have some difficulties with because it waters down the responsibility, who is to have the responsibility, the inspectors or the Director. In our view, to be consistent, it should be the Director. The inspectors merely work for the Director.

Mr. Chairman: Mr. Jackson, do you have anything you wish to add?

Mr. Jackson: No, except that having listened to the debate, I find growing support for the fact that the legislation may already be sufficient in this regard and I, without having any legal counsel with respect to the ramifications of an inspector having specific responsibilities to investigate all complaints, that in some way they may be held liable as opposed to the Director, then I would be a little concerned about its impact for the employees of the province who are responsible for inspections with this kind of specific language change.

Mr. Chairman: Any comment at all, Ms. Baldwin in terms of the drafting of these, as to whether or not something goes in a section as compared to the other sections alluded to by the Parliamentary Assistant, or to the question of responsibility being laid on the inspector rather than on the Director?

Ms. Baldwin: As the Parliamentary Assistant said, I think when there is an intended government motion dealing with the issue of reports under section 17a, that would require inspections forthwith.

There is an already passed motion with regard to complaints forwarded from the licensee that requires inspections forthwith. There is a provision that has already passed where the health or safety or welfare of the residents is in danger requiring inspections and visiting of the home forthwith.

I suppose it is conceivable that there are complaints that might come to the Ministry by some other route that may not be covered for which there is not a requirement of forthwith. I suppose that is arguable. I am not in the field, I would not be able to comment on that.

With regard to the motion of Mr. Cooke's as it is now drafted, it would seem to be placing that duty on the inspector who one would assume would be liable as a result.

I suppose if the Committee, in its view, wanted to make sure that everything was covered forthwith, it could be redrafted to make it clear that it was the Director who was responsible, to make sure that all investigations or all complaints were investigated forthwith.

Mr. Chairman: Is that clarified for you? Any further discussion?

Seeing none. All those in favour of Mr. Cooke's amendment, section 13 to amend section 16 of the Act, please indicate. Those in favour? Down. Those opposed?

Motion is defeated.

On section 17:

The next stood down section, 17a(2). This, you may recall, was a matter of compound amendments. We presently have before us, as stood down, Mr. Reyecraft's amendment which was further amended by Mr. Cooke so we are dealing with Mr. Cooke's amendment which takes the last line and a bit off Mr. Reyecraft's motion. Removes the words: "Unless the other person acts maliciously or without reasonable grounds."

But basically, just to refresh everybody's memory, this is the whole question about malicious reporting or unreasonable grounds for reporting and we are having a fair amount of debate on it.

Mr. Sterling then suggested he would like to propose a couple of amendments which he has circulated to us. They are not in order as yet because they are not amendments to Mr. Cooke's amendment, so we really have to deal with Mr. Cooke's amendment before we deal with any further sub-amendments to Mr. Reyecraft's motion. So we are basically still on Mr. Cooke's motion.

Mr. Cooke?

Mr. Cooke: I believe my amendment was simply the amendment to delete "unless the other person acts maliciously or without reasonable grounds".

Mr. Chairman, we did have a fair amount of debate on this the other day, but I feel even more strongly after thinking about it on the weekend that given the fact that we have subsection (3) that there is absolutely no need for this in this legislation.

The discussion last week, both with regard to this section and the section dealing with residents' council assistants, and the similar or parallel section that covers them dealing with malicious or without reasonable grounds complaints, always assumes that what we are doing by eliminating this is allowing people to be malicious and make complaints without reasonable grounds.

The reality is that my concern is not about the people that are going to be making malicious or without reasonable grounds complaints because they are covered by subsection (3) and they would be subject to the substantial fines that are contained in this Act. My concern is with the nursing homes who will use this to intimidate people from making complaints and that is exactly what is going to happen, that without a complete amnesty, nursing homes will abuse this section.

The Ministry knows very well that they will abuse it because that is exactly what Mr. Fedyna did at Country Place Nursing Home just a few years ago and thank God, in that place, the staff were represented by a union and the union was able to go to arbitration and the three employees that were fired were reinstated by an arbitration board.

But that is not the case with people that are not unionized, and a lot of nursing homes are not unionized and they will have no recourse at all other than to sue the nursing home for firing without reasonable grounds or without - whatever the term is under the labour legislation - without just cause, at considerable expense to the individual, considerable time of being unemployed without compensation and with absolutely no support at all.

And that is exactly what is going to happen if we leave this section in. I still suggest to you that the most appropriate compromise is to withdraw this section, the section referring to "unless another person acts maliciously or without reasonable grounds" and add that to subsection (3), so that subsection (3) could read:

"No person shall include in a report to the Director under subsection (1) information the person knows to be false, malicious or without reasonable grounds."

Then if anyone does that, it does not give the owner of the nursing home the opportunity to harass the individual or fire the individual, it instead means it is a violation of the nursing home Act and subject to prosecution by the Ministry of Health. And I think that would be the much more appropriate way to go.

It would not give any one a blank cheque to make

reports without reasonable grounds or maliciously. It would still be a violation but it would mean that the enforcement would be with the Ministry of Health and it would not give a blank cheque to the owners of nursing homes, only a few of whom would use that kind of harassment, but there are a few as demonstrated by Mr. Fedyna at the Country Place Nursing Home.

And I can give you other examples as well, not wide-spread in all 320 or whatever nursing homes in this province, but all it takes is one or two and word gets out to the staff members and residents and relatives that they had better not complain because this section has been used against people in other nursing homes in the province and, obviously, the purpose of section 17 is to encourage people to report and we do not want to put anything that would dissuade any one from making a report to the Director under section 17.

Mr. Chairman: Ms. Hart?

Ms. Hart: Yes. I do not intend to go over old ground. We think in the interest of fairness to all the parties that it has to be left in, the saying about acting maliciously or without reasonable grounds.

We do take the point about the words coerce, intimidate or attempt to coerce and that they may have an additional meaning and that is why we will not be supporting this amendment, but we believe the best compromise is the one proposed by Mr. Sterling.

Mr. Chairman: Thank you.

Mr. Reyecraft?

Mr. Reyecraft: Mr. Chairman, Mr. Cooke in his remarks in support of the amendment referred to the incident at Country Place and he talked about members who were reinstated as a result of arbitration, reinstated after being dismissed because they had maliciously reported.

If my memory is correct was it not just the penalty for malicious reporting that was changed in that particular situation? Did the Arbitration Board not rule that indeed the employees had maliciously reported on the owner?

Mr. Cooke: I think if you read the entire...

Mr. Reyecraft: And was not the result that they felt the penalty was too severe and they reduced it by recommending or putting in place a suspension instead of the dismissal that had been applied?

Mr. Cooke: I think if you read the entire arbitration

award as I have, you will read it quite differently than the way that you have interpreted it. Because that is not the meaning of the award at all.

Mr. Jackson: Pretty hard to conclude.

Mr. Chairman: Any further discussion?

There being none. We are dealing with Mr. Cooke's sub amendment to delete the words "unless the other person acts maliciously or without reasonable grounds".

All those in favour? Down. Those opposed? Motion is defeated.

We are back with Mr. Reycraft's motion. Mr. Jackson?

Mr. Jackson: I have an amendment, Mr. Chairman. I guess it is two-part and I should read them both together.

Mr. Chairman: You might as well read them together, I would think.

Mr. Jackson: I move that section 15 subsection 17a sub (2) of the Act as set out in Mr. Reycraft's motion amending section 15 of the Bill be amended by striking out "penalize, coerce, intimidate, or attempt to coerce or intimidate" in the second and third lines and insert in lieu thereof "or penalize."

And along with that I move that section 17a of the Act as set out in section 15 of the Bill be amended by adding thereto the following new subsection (2) sub (a):

"No person shall coerce, intimidate or attempt to coerce or intimidate another person because information described in clauses (2) sub (a) (b) or sub (c) has been given to the Director."

Mr. Chairman: All right, Mr. Jackson, that is in order. That is the motion?

Mr. Jackson: It has been addressed nine ways sideways, Mr. Chairman.

We found the concept of coerce and intimidate being condoned activity difficult in legislation and, therefore, found a way around it and yet maintaining some concerns and balance on the notion of malicious or without reasonable ground complaints, and we believe that this will help the Bill and not detract from it in any way.

Mr. Chairman: Thank you. Any further discussion?

Could I just ask you a question on it? How does it

work in the sense of who reports the attempt to coerce and what is the methodology for proving that, et cetera? What is the...

Mr. Jackson: You should have asked the counsel.

Mr. Chairman: Do you have any help on that?

Mr. Campbell?

Mr. Campbell: The scheme contemplates a very broad reporting requirement. If a person who makes a report under sub (2), or makes a report under sub (1), is met by any form of, shall we say, sanction by the employer or by any one else, then that particular person can use that section as a way of defending any particular sanction brought against them.

It could take the form of some form of labour tribunal or possibly a civil suit. Essentially it is protection which must be invoked by the individual against whom some sanction has been brought.

Mr. Chairman: So what I am presuming then, the order of things might be that a person makes a report, an owner of a nursing home says that this has been done frivolously or maliciously and suspends the person for that reason and then there is a hearing on that. The person then might try to defend themselves on the basis that this was an act of coercion, or if they were proven innocent on that or whatever, then they would take action on the coercion. Is that...

Mr. Campbell: I think it is probable that the person seeking to oppose some sort of sanction can be burdened with proof of malice and I think that is what it is probably intended to say.

Mr. Chairman: So that...

Mr. Campbell: So in the order of things, the individual makes the report, the employer, shall we say, says: Ah, I think you have acted maliciously, I am going to do something to you, like, fire you. I would think that the individual could firstly point to this subsection as their defence and say: As part of your case against me, you must show malice.

The other alternative, the other approach might be to have the individual make a report and have some form of sanction imposed. They could then say: I have been affected in some way by the decision of my employer. I certainly have not acted maliciously, I do not have to prove the negative, but I certainly rely on subsection (2).

And I think under those circumstances, as well, you would have the onus on the employer to show malice. I think the burden of proof would remain, the burden of the proof of maliciousness would rest with the person seeking to oppose the sanction, in most cases, as it would seem to me.

Mr. Chairman: And the burden of proof to prove coercion?

Mr. Campbell: If the individual was in some way coerced, they would say that I have suffered some sort of penalty, I have been coerced by this individual, I will bring a suit against him. And they would have the burden of proving in the first instance that they were in some way coerced or intimidated.

Mr. Chairman: Any further discussion on Mr. Jackson's motion?

Seeing none. All those in favour, please indicate? Down. Those opposed? Motion is carried.

Next. I took it as one motion and the second reading of the amendment. So that is 17a(2). Shall Mr. Reyecraft's motion, as amended, carry?

Carried? Agreed.

The Chairman: We now move to...

Mr. Jackson: May I ask just a quick question because last week we dealt with it, his amended motion. I will not ask to have it all read, but that was where we had a person advising believes not to be reported to the Director. We had amended it.

Mr. Chairman: Yes, we have made an amendment to it, I think, had we not? No, we did not.

Ms. Baldwin: Sorry, there is no amendment.

Mr. Chairman: What was the change you made on that, I cannot remember, Mr. Reyecraft?

Mr. Reyecraft: Well, my understanding is that section (2) now reads:

"No person shall dismiss, discipline, or penalize another person because (a) (b) (c) unless..."

Mr. Jackson: I am looking at (c). If you had amended or if you just verbalized at that point in (c):

"...the operation of a nursing home that the person advising believes ought to be reported to

the Director."

Did that get put in? Was that supposed to be put in?

Mr. Chairman: I have no record at all of it in terms of our accepting a change here. So if that is a desire we would need a motion now before I close off the subsection as amended.

Do we need the clarification?

The Government is not intending to move anything to clarify it any further.

Mr. Jackson: Okay, so it is not better form or... Okay. I just raised the question.

Mr. Chairman: Oh, I see. No, the motion that we have from Mr. Reycraft does have the person advising in it, yes.

Mr. Jackson: Yes. Thank you. That is what I wanted to make sure, that that was what it was we...

Mr. Chairman: I think you may be looking at Mr. Cooke's.

Mr. Jackson: No, I am looking at what I wrote down when Mr. Reycraft was talking, but I did not know if we had gotten it amended or if he just indicated that he would be willing to support that.

Mr. Chairman: No, it was introduced it as part of the text of the initial amendment.

Mr. Jackson: Thank you.

Mr. Chairman: So shall 17a(2), as amended, carry?

Carried.

Now, we have a new amendment 17a sub (6). We stood down the others as a result of that, sorry, yes.

What we did was, as you may recall, after the stopping of standing down (2), we then stood down the rest of that subsection rather than dealing with other things. So I have no amendments for sub (3) (4) or (5).

Is there any discussion?

Carried.

We have a new 6 from the Government which reads:

Ms. Hart: I move that section 17a of the Act as set

out in section 15 of the Bill be amended by adding thereto the following subsection; sub (6):

"The Director shall cause any report made under subsection (1) to be investigated forthwith after receiving it."

Mr. Chairman: Thank you, Ms. Hart. Do you wish speak to it?

Mr. Cooke: We do not need to because we have it all through the Act.

Mr. Chairman: I believe we discussed this very, very fully under Mr. Cooke's earlier motion as he is lightheartedly telling us. So if there is no further discussion, shall Ms. Hart's motion carry?

All those in favour?

Mr. Reycraft: Carried.

Mr. Chairman: Carried.

Shall section 17a, as amended, carry?

Carried. Agreed.

From the Floor: Carried.

Mr. Chairman: What else has been stood down?

Yes 17d. You may recall that we went back after finishing 17d and reopened it with a couple of new Government amendments, and I gather today we have a new updated version of that?

Mr. Cooke: Yes.

Mr. Chairman: I am sure I cannot wear my hats.

Has somebody else got it over there? Mr. Reycraft, why do you not read it while the clerk is distributing it.

Mr. Reycraft: Mr. Chairman, I move that section 17d of the Act as set out in section 15 of the Bill be amended by adding thereto the following subsections:

"(3a) The minister, with the consent of a residents' council, may appoint no more than three persons to be members of the residents' council and those persons shall serve as members at the pleasure of the residents' council.

"(3b) The persons appointed under subsection

(3a) shall be persons who live in the area in which the nursing home is located and who are not employed by and who do not have a contractual relationship with the Ministry."

Mr. Chairman: Thank you, Mr. Reyecraft. Would you like to speak to it or would the Parliamentary Assistant?

Mr. Reyecraft: I am sure she would.

Mr. Chairman: The Parliamentary Assistant.

Ms. Hart: Thank you, Mr. Chairman.

This amendment was drafted in response to the submissions by virtually every group that appeared before us that they wished to have some community input.

We had originally crafted the amendment so that that community input took the form of appointees to the residents' council advisory committee. Since that has fallen by the wayside, and we thought it is still of value to have community input on the residents' council, we are proposing this amendment.

I would just draw to your attention that it is only with the consent of the residents' council and at the pleasure of the residents' council and they are persons who are living in the area and are not contractually related to the Ministry.

Mr. Chairman: Thank you.

Mr. Cooke?

Mr. Cooke: I am just wondering, I appreciate this amendment is more acceptable than the original proposal by the government; it is still not entirely clear who initiates this process and I am just wondering whether we could take a look at changing three words, that instead of saying "with the consent of" that we put "at the request of."

Mr. Chairman: Ms. Hart?

Ms. Hart: I have no difficulty with those three words at all.

Mr. Cooke: Could I -- we do not need to do an amendment, do we, if there is agreement?

Mr. Chairman: Yes, actually it is easier. There is really no such thing as a friendly amendment since it is three words rather than one.

Mr. Cooke: All right.

The Chairman: The suggestion is that it is "at the request of"-- sorry. The motion is that "at the request of" should replace the words "with the consent of", in order to indicate where the initiative is coming from.

Mr. Cordiano: That changes it.

Mr. Chairman: Since there are no problems...

Mr. Reyecraft: Mr. Chairman, could you repeat the change?

Mr. Chairman: Certainly, yes,

Mr. Reyecraft: I was distracted.

Mr. Chairman: Mr. Cooke, why don't you so that we can...

Mr. Cooke: It will say:

"The Minister, at the request of a residents' council may appoint..." et cetera.

Mr. Cordiano: So it is being initiated by the residents' council. Very good.

Mr. Cooke: Power to the people.

Mr. Cordiano: So it is changed to "at the request of".

Mr. Chairman: Seeing no further discussion on this matter, all those in favour of Mr. Cooke's amendment, please indicate.

Down. Carried.

All those in favour of Mr. Reyecraft's motion as amended, please indicate. Carried.

And shall 17d, as amended, carry? Carried.

Now, do the members -- I stood down just most recently today the whole question of the regulating powers, although we have not dealt with the definitions of the first or the bill of rights which you say you are not ready to deal with until tomorrow, it does not seem to me that we need to be curtailed in dealing with the regulations now unless I am being advised otherwise.

No, legal counsel, says that that does not seem to be any kind of a conflict and, of course, if anything should arise tomorrow that made it necessary to reopen, we can

always vote to reopen.

On section 17:

So shall we deal with section 17 of the Act found on page 17. Do I have amendments? I cannot remember.

I have amendments to 17(2) but not to 17(1), so shall we take 17(1) which just basically says:

"(1) Clause 20(j) of the said Act is amended by adding at the end thereof: "and governing their form and content."

No amendments. All those in favour, please indicate? Down. Carried.

Section (2), I do have a Government amendment. Let me do it this way if we might. We would have a new O(a) -- why do we not deal with this sub-clause by sub-clause and deal with the...

Okay. Let's deal with these as sub-clauses, each going through and that might be the easiest way.

(ma) would be the first sub-clause respecting the form and content of requests for proposals for the issuing of nursing home licences. There is no amendment to that.

All right. Everybody with me here? On the final back page of the Act as it is printed, 176, back page of the Act, there are a series of -- under 17 sub (2) you have a series of subsections listed (ma) (ta), (tb) et cetera, et cetera.

All right. And I will you of each of the ones that I have an amendment applying to or if there is a need to make any change that we have not got an amendment for at this stage.

(ma) there is nothing from any of the parties respecting (ma). So shall (ma) carry?

Ms. Hart: Carried.

Mr. Chairman: All those in favour? Carried.

Then we would move to (ta) and again there is no amendment to (ta).

"(ta) designating services to be provided to residents by licensees for which no more than a prescribed amount may be charged in prescribing that amount"

All those in favour, please indicate?

From the Floor Ta.

Mr. Chairman: Ta.

(tb). There is a Government motion here, I believe that will be moved by, Mr. Reycraft ?

Ms. Hart: Yes, there is.

Mr. Chairman: That is right.

Mr. Reycraft: Mr. Chairman, I move that clause 17 (2) of the Bill be struck out and the following substituted therefor:

"(tb) defining the year for the purposes of subsection 17c (1) financial reporting prescribing other information respecting the operation of financial affairs of the nursing home for the purposes of clause 17c (1ac) and prescribing the form and manner in which the statements shall be made."

Mr. Chairman: Thank you, Mr. Reycraft.

Does anybody wish to clarify why it is appropriate? Obviously it is referring back to the sections which we passed in terms of the financial reporting which were not in the Bill previously.

Thank you, Mr. Johnston.

All those in favour of Mr. Reycraft's amendment, please indicate?

Carried.

"(tc) respecting the establishment and conduct of residents' councils;"

That would stay. There would be no amendment to that. All those in favour, please indicate? Carried.

"(td) prescribing additional functions of a committee;"

That will require an amendment. It should be struck out. We no longer have the committee, so you should vote against this in the sense that there is no such thing as a committee in the Act now.

All those in favour of (td), please indicate? All those opposed? Defeated.

Mr. Callahan: (inaudible)

Mr. Chairman: It is my uncanny leadership skills which only my party are sensible enough to ignore.

Mr. Jackson: I am trying to read and listen to you.

Mr. Chairman: (te), we are moving. We now have to have a motion which would strike out again the reference to "committee".

Would somebody so move? Mr. Reycraft?

In (te) you will notice in the third line, the words "a committee" again are brought forward, and we would need to --

Mr. Cordiano: Council's assistant too?

Mr. Chairman: Yes, we have authority to change the advisor to assistant all the way through but we do not have authority, as yet, to remove the words "a committee" which Mr. Reycraft now moves.

Mr. Reycraft: So moved.

Mr. Chairman: Thank you, Mr. Reycraft.

All those in favour of Mr. Reycraft's motion?
Carried.

All those in favour of (te) as amended? Carried.

Shall we leave 18 and 19 until we have dealt with.
Shall 17, as amended, carry? Carried.

Sorry, do you have another, Mr. Cooke?

Mr. Cooke: I have a further amendment.

Mr. Chairman: I do not think Mr. Cooke's amendment is required.

Mr. Cooke: No, as a result of...

Mr. Chairman: Is Mr. Cooke withdrawing those?

Mr. Cooke: No, it is just that you defeated all the relevant sections.

Mr. Chairman: Oh, all right. Okay.

Mr. Cooke: Could I raise a point before we finish today on this Bill today?

Mr. Chairman: You could until -- we, of course, could deal with the definitions now and just leave Bill of Rights for tomorrow. Would you like to do that, or do you want to do them both tomorrow?

Mr. Cooke: Just a couple of minor things.

Mr. Chairman: Mr. Cooke?

Mr. Cooke: The section dealing with notices of additional services and the section of rights to participate in a residents' council, we used the words "legal representative" as opposed to "representative" as we did in all other cases.

Are those changes that will be corrected by legal counsel for editing changes or should we change those now?

Ms. Baldwin: I might recommend -- I understand that Mr. Cooke has a motion...

Mr. Chairman: Order.

Ms. Baldwin: I understand Mr. Cooke has a motion dealing with that in section 2 of the Bill. Maybe at that time it would be appropriate for the Committee to decide if it wants consistency with regard to the use of the word "residents" through the Bill and we can deal with it at that time, if the Committee agrees.

Mr. Cooke: Okay. And there was one other...

Mr. Chairman: Do I understand that there is still a question of whether we are saying "legal representatives" or just "representatives" and whether or not what consistency we want, or deal with that when we deal with 2 tomorrow?

Mr. Cooke: There was one other section, when I made my motion on residents' councils and transferred three sections from the regulations into the Act, there is indeed a fourth section that should be accompanied with that from the regulations which reads:

"Where a meeting is held under subsection (2) or (3), the Administrator shall notify the Director within 30 days of the results of the meeting."

What we now have in the Act is the provisions for the Administrator of the nursing home calling a meeting of the residents to set up a residents' council, but we do not have the reporting mechanism to the Director if, in fact, the residents decide to set up a residents' council.

Mr. Chairman: I was going to say, why do we not have you prepare something with legal counsel that we could deal

with the whole question of any reopenings before we get to 18 and 19 tomorrow - okay? - and the final sections.

Mr. Cooke: It is a minor non-controversial section.

Mr. Chairman: If you desire that we clean it up in that way we can do so.

Ms. Baldwin: And we will not be dealing with the second Bill tonight?

Mr. Chairman: Yes, we will deal with the second Bill tomorrow. Most of the matters changed in the second Bill are just a matter of trying to make sure that they are consistent with the changes we have made in 176.

So I think when we deal with -- if you like we could finish up with the definitions now, and deal straight with the Bill of Rights first thing in the morning and then move on to cleaning up any reopenings that might be necessary and finishing this Bill and then move on to 177.

Would that be all right? So let us deal with the definitions now, okay.

On section 1:

Section 1, oh yes. The first definition, of course, again is the word "committee" and we should vote against section 1 sub (1) (aa). All those opposed, please indicate?

Ms. Baldwin: Opposed. You got it right.

Mr. Chairman: Gotcha this time.

The motion is defeated.

(ba) there is no amendment. Does (ba) carry? All those in favour? Carried.

And there is no amendment to (j) I do not think. Shall (j), the security interest definition, carry? All those in favour? Carried. Good.

Mr. Cooke: I have one thing -- no, I do not need the one about one person as a father, mother, brother...

Ms. Baldwin: That does not come in until...

Mr. Cooke: Oh, all right.

Ms. Baldwin: ...subsection (3).

Mr. Cooke: Sure, okay.

Mr. Chairman: So we are now moving. So does section 1, sub (1), as amended, carry?

From the Floor: Carried.

Mr. Chairman: Carried.

Section 1, sub (2). So we have no amendments to sub (2) of (2). Shall sub (2) of (2) carry? Carried.

Sub (3), Mr. Cooke has an amendment.

Mr. Cooke: Okay. I move that subsection (1)(3) of the act as set out in subsection (1)(2) of the Bill be amended by striking out "or" at the end of clause (e) and by adding thereto the following clause:

(e)(a) One person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person or; ..."

I further move that clause (1) (f) of the said subsection is amended by striking out (e) in the second line and inserting in lieu thereof (e)(a).

Mr. Chairman: Thank you, Mr. Cooke. Would you like to speak to that?

Mr. Cooke: Basically what this does is expand the definition of people who are related for the purposes of -- I am trying to remember exactly what this is doing, but perhaps legal counsel can remind me.

Mr. Chairman: Why am I doing this legal counsel?

Ms. Baldwin: In terms of the utter nitty-gritty of it, I may pass it on to the other legal counsel, but associate is a term that is used in defining controlling interest.

Mr. Cooke: Ah, yes.

Ms. Baldwin: Which is used in a number of the provisions dealing with transfers of shares and various things like that and...

Mr. Callahan: For tax purposes.

Ms. Baldwin: Excuse me?

Mr. Callahan: For tax purposes.

Ms. Baldwin: And as you say your amendment is including relative and...

Mr. Cooke: I knew that, I just wanted to know whether you remembered.

Mr. Chairman: I do not think so Mr. Cooke.

Ms. Hart?

Ms. Hart: We will be supporting this amendment.

Mr. Chairman: Thank you, Ms. Hart.

Mr. Jackson?

Mr. Jackson: I do not understand the purpose of it, actually. I do not understand. The Ministry people can advise or its relevance is when ownership is being transferred. Where will this take us?

Mr. Chairman: Mr. Johnston, perhaps you could try.

Mr. Johnston: This comes up, sir, where we talk about controlling interests in a corporation and actually it is fairly standard in other statutes. It just covers a situation where one divides one's interests among one's family and so it is to pick up these relatives and include them, in effect, as being the licensee.

And, as I say, it is relevant when we discuss a transfer of the controlling interest in a corporation which is a matter which requires the approval of the Director. It is likened -- it is tantamount to a sale in some cases.

Mr. Chairman: You may recall, Mr. Jackson, I am just being reminded by counsel on this side of things that when we start dealing with the revocation procedures, et cetera, past conduct of applicants, et cetera, it starts to become a factor and it is one of the reasons why it is felt that this should be a little clearer.

Ms. Baldwin: And also with issuing and renewing of licences. You passed a provision that said that the past conduct of persons with a controlling interest in a nursing home would afford reasonable grounds for belief, for example, that the home might not be operated in accordance with the law and with honesty and integrity.

What the definition of associate does is to say that if a licensee is related to another licensee in the sense of the corporate relationships already in the Bill or in terms of family relationships as in Mr. Cooke's motion, if that passes, okay, then you look to the controlling interest of that group of associated people for the purposes of the sections having to do with renewals and revocations and past

conduct.

Mr. Jackson: So if a son or a daughter has a minor share in a corporation, they come afoul of the law, totally unrelated, technically that conduct can be used against the operator and the controlling shareholders of a corporation in a licence renewal hearing?

Ms. Baldwin: If the interest in the nursing home licence of the licensee and the son of the licensee, when combined, amounts to a controlling interest under this Bill, that is correct.

I mean, if you are looking at the son or the daughter having a 20th of a percentage, you know, a 20th of one per cent of a share, then the father or the rest of the family would have to have the balance of the percentage to get it up to that amount that is the controlling interest. That is how it reads.

Mr. Jackson: Thank you.

Mr. Chairman: Thank you, Mr. Jackson.

Any further discussion? Seeing none. All those in favour of Mr. Cooke's motion to create a new (e)(a) and to refer to (e)(a) in subsection (f), please indicate?

Carried.

Shall subsection (3) as amended, carry?

Carried.

Sub (4), do I have any amendment? I do not think so.

Ms. Baldwin: No.

Mr. Chairman: There is no amendment to sub (4) presented. So all those in favour of sub (4), please indicate?

Carried.

Shall subsection (1), as amended, carry?

Carried. Thank you.

We will adjourn until tomorrow morning at ten o'clock when we will start off with subsection (2), the question of principles or the bill of rights.

The Committee adjourned at 3:50 p.m.

1011
C12
S78

Publications
S-84

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
NURSING HOMES AMENDMENT ACT
HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT
TUESDAY, MARCH 10, 1987
Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Mitchell, R. C. (Carleton PC) for Mr. Baetz

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Johnson, J. M., Director, Legal Services Branch

Reid, R. H., Assistant Deputy Minister, Institutional Health

Campbell, M., Counsel, Legal Services Branch

Sapsford, R. T., Director, Nursing Homes Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, March 10, 1987

The Committee met at 10:10 a.m. in Room 228.

The Chairman: I call the meeting to order.

We are returning to our discussions of Bill 176, An Act to Amend the Nursing Homes Act. We have dealt with all sections of the Act except section 2, the matter of the guiding principles, and the final two which talk about when it comes into a consent, sections 18 and 19, and the title of the Act. We have had a number of amendments on this section 2 and I have new ones presented to me this morning.

I am just trying to figure out which one of the ones I have to deal with first. Mr. Jackson's motions are on a new 1a(3b) and there is a subsection 2.

Mr. Jackson: It could be section 20 of Mr. Cooke's amendment.

The Chairman: So I think we can hold yours down until the dealing of Mr. Cooke's amendment, so, Mr. Cooke, why don't you take a little sip there to coat your larynx and then read into the record your short four-page motion.

Mr. Cooke: I move that subsection 1a(2) of the Act as set out in section 2 of the Bill be struck out and the following substituted therefor:

"(2) Every licensee shall ensure the following rights of residents are fully respected and promoted:

- "1. Every resident has the right to be treated with courtesy and respect in a way that fully recognizes the resident's dignity and individuality and to be free from mental and physical abuse.
- "2. Every resident has the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.
- "3. Every resident has the right to be told who is responsible for and who is providing the resident's direct care.
- "4. Every resident has the right to be afforded privacy in treatment and in caring for his or her personal needs.

- "5. Every resident has the right to keep in his or her room and display personal possessions, pictures and furnishings in keeping with safety requirements and other residents' rights.
- "6. Every resident has the right,
- "(a) to be informed of his or her medical condition, treatment and proposed course of treatment;
 - "(b) to give or refuse consent to treatment, including medication, in accordance with the law and to be informed of the consequences of giving or refusing consent;
 - "(c) to have the opportunity to participate fully in making any decisions and obtaining an independent medical opinion concerning any aspect of his or her care, including any decision concerning his or her admission, discharge or transfer to or from a nursing home; and
 - "(d) to have his or her medical records kept confidential in accordance with the law.
- "7. Every resident has the right to receive reactivation and assistance towards independence consistent with his or her requirements.
- "8. Every resident who is being considered for restraints has the right to be fully informed about the procedures and the consequences of receiving or refusing them."

If I might just point out on that one, the words "extraordinary or intrusive procedures" has been removed because it is adequately covered by section 6.

- "9. Every resident has the right to communicate in confidence, to receive visitors of his or her choice and to consult in private with any person without interference.
- "10. Every resident whose death is likely to be imminent has the right to have members of the resident's family present twenty-four hours per day.

- "11. Every resident has the right to designate a person to receive information concerning any transfer or emergency hospitalization of the resident and where a person is so designated to have that person so informed forthwith.
- "12. Every resident has the right to exercise the rights of a citizen and to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the residents' council, nursing home staff, government officials or any other person inside or outside the nursing home without fear of restraint, interference, coercion, discrimination or reprisal.
- "13. Every resident has the right to form friendships, to enjoy relationships and to participate in the resident's council.
- "14. Every resident has the right to meet privately with his or her spouse in a room that assures privacy and where both spouses are residents in the same nursing home, they have a right to share a room according to their wishes, if an appropriate room is available.
- "15. Every resident has a right to pursue social, cultural, religious and other interests to develop his or her potential and to be given reasonable provisions by the nursing home to accommodate these pursuits.
- "16. Every resident has the right to be informed in writing of any law, rule or policy affecting the operation of the nursing home and of the procedures for initiating complaints.
- "17. Every resident has the right to manage his or her financial affairs where the resident is able to do so, and where the resident's financial affairs are managed by the nursing home, to receive a quarterly accounting of any transactions undertaken on his or her behalf and to be assured that the resident's property is managed solely on the resident's behalf.
- "18. Every resident has the right to live in a safe and clean environment; and
- "19. Every resident has the right to be given access to protected areas outside the nursing home in order to enjoy outdoor activity,

unless the physical setting makes this impossible.

"(2a) Without restricting the generality of subsection (1), this Act and the regulations are to be interpreted so as to advance the objective that the resident's rights set out in subsection (2) be respected."

The Chairman: Thank you, Mr. Cooke.

Would you like to speak to your amendment?

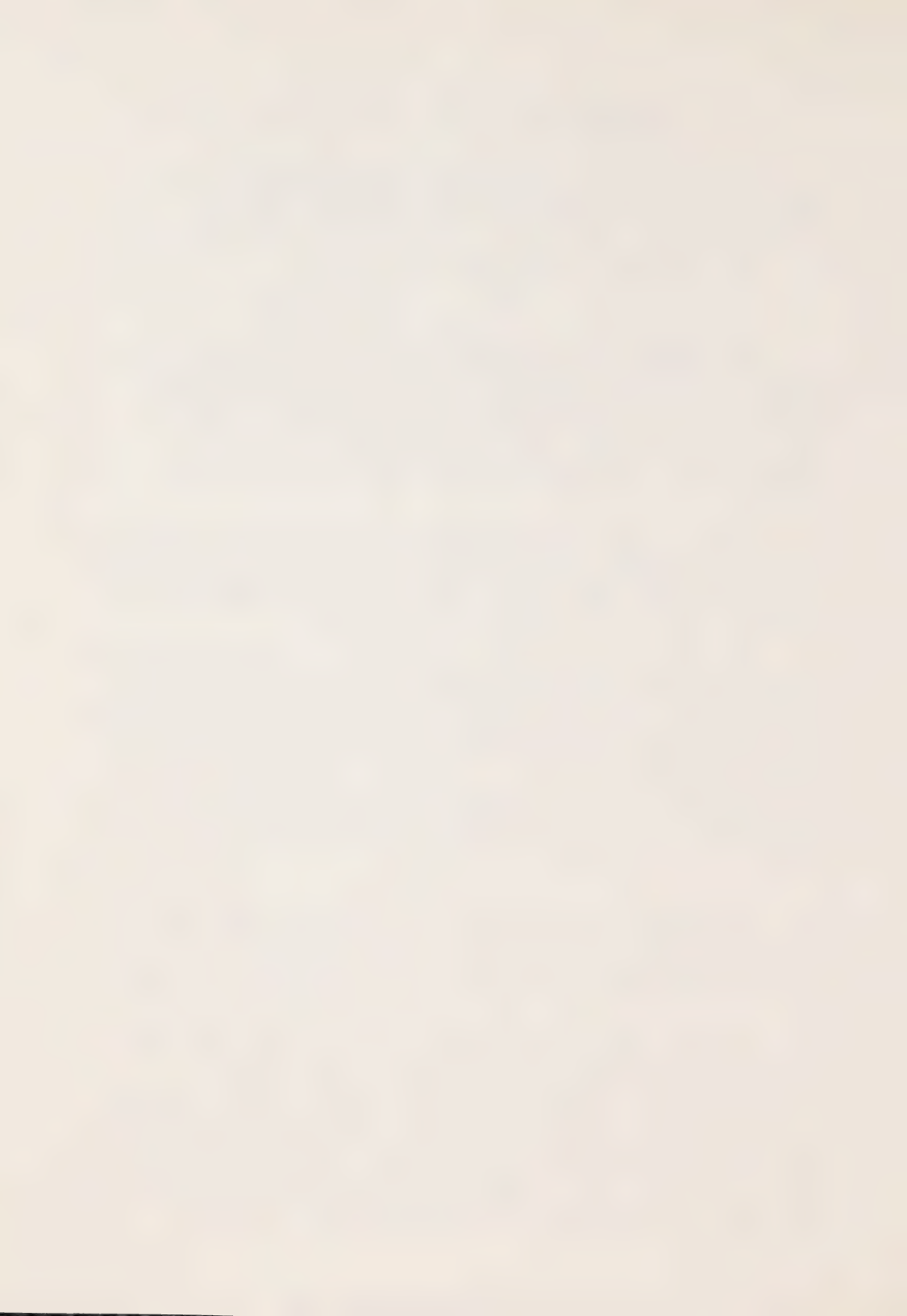
Mr. Cooke: Mr. Chairman, this is a result of a few weeks of discussion between Parliamentary Assistant and myself in an effort to come up with a bill of rights as opposed to the current Statement of Principles, which I think if passed today will be a major step forward in recognizing and enshrining in law basic rights that residents are entitled to in the nursing homes of this province.

I might point out that sure, a lot of these rights are already guaranteed in other pieces of legislation, but it is absolutely essential that residents have the opportunity to exercise those rights, and it is difficult to exercise rights if one is not always aware of them.

By having these rights spelled out in the legislation, by approving an accompanying motion that will be discussed later whereby the rights will be spelled out in a contract that will be signed by the nursing home and by the resident, I am absolutely convinced that an additional and major aspect of accountability will be built into the legislation of this province. I can only feel that any additional accountability that is built into legislation results in an improvement in the quality of life and the quality of care of Ontario's 30,000-plus residents in Ontario's nursing homes.

I am particularly pleased on behalf of our party to move this motion, and I want to particularly thank the Member for York East in working closely with me in order to come up with a resolution that is one that we can both embrace and endorse and enshrine in the legislation today.

I think that part of the passing of this today is symbolic in its importance, but I also believe that since there is an enforcement mechanism, two enforcement mechanisms, one whereby a violation of this section is a violation of the Act and therefore subject to the penalties of the Act and also the fact that it will be in a contract and residents have the opportunity as well to enforce the Bill of Rights, that it will mean improvements in the quality of life and a substantially improved recognition of the rights of residents in Ontario's nursing homes.



After being a Member of the Legislature for almost ten years, I can say that I feel really good that this motion is going to be approved today in the Committee and I think that all members of this Committee can be proud of the Bill that's going to come out of this committee today and reported back to the Legislature in a few weeks.

The Chairman: Thank you, Mr. Cooke.

Ms. Hart.

Ms. Hart: Mr. Chairman, I think this bill of rights is a very good example of democracy at work, not just between Mr. Cooke and myself, but also with respect to all of the groups that appeared before us in the public hearings. This is very much a participatory section, and we owe a lot of thanks to everyone in this room, all three parties, and also all of the groups that took the time to consider what we had put forward and to bring forward constructive suggestions.

I know that it won't go as far as some would like and it goes too far for others, but we have endeavored to come up with a solution that advances the needs of those residents of Ontario who live in nursing homes.

The government has been persuaded that a bill of rights is necessary as a symbolic thing. It is something that can be used as an educational tool. It can set out rights, many of which are already enshrined in the general law, and an argument could be made that they don't need to be set out here, but we are dealing with people who perhaps don't know these rights and it is very much a value to them to have a ready reference that lets them understand what they are entitled to when they are living in a nursing home.

It is a first step, and I think I am very happy to say a positive first step towards looking after those needs of the residents of nursing homes in Ontario, and I, along with my party, will be very happy to support this Bill of Rights.

I wish to congratulate all of those members of the Committee who have participated in this whole exercise, as I may not have a chance later on.

The Chairman: Mr. Jackson.

Mr. Jackson: Thank you, Mr. Chairman. I am pleased to be able to comment on behalf of the official opposition with respect to this amendment, which I was delighted to read this morning in the Globe and Mail that the government had come around to supporting the notion of a bill of rights.

Having participated last year in a rather extensive examination of human social services, there was a PC task force which conducted that inquiry, a party that made a very strong and vocal statement about the need for a patient's bill of rights for all patients in Ontario, and we are pleased that this is a full and initial step with respect to residents of nursing homes in Ontario. So we are pleased to see the government finally coming to that same conclusion.

However, I am not encouraged to hear from my learned colleague from York East that she considers this very important and key amendment to be necessary as a symbolic tool for educational purposes. I see this section being far more important for the residents of nursing homes in Ontario.

It does raise concerns about the fact that if it is perceived by the government that this amendment is primarily symbolic, it only reinforces our party's concern that in fact the Bill lacks a certain amount of integrity with respect to the issue of staffing and meeting the assessed needs of the residents in Ontario.

Clearly the OMA indicated in its presentation that some 30 per cent of all the residents in nursing homes in Ontario are in need of chronic-care support and nowhere does this Bill address that.

So for that reason, Mr. Chairman, our party will be presenting an amendment when you deem appropriate calling for those assessed needs to be met as a further and final right for residents of nursing homes in Ontario.

The Chairman: Thank you, Mr. Jackson.

Further discussion?

Mr. Davis.

Mr. Davis: Mr. Chairman, I would just like to echo my colleague's remarks in being as non-partisan as possible to indicate that it is nice to see that, first of all, minority government is working, that it is very effective and that with a bit of consultation and I guess --

Mr. Callahan: There is surely a lot more to that bill.

Mr. Davis: Well, you know, gentlemen, I remember two or three other bills that the Liberals had positions on that they changed at the last minute. I can recall Bill 30, Mr. Chairman.

Mr. Callahan: At least we brought the Bill forward.

Mr. Davis: And I think it's imperative to point out the coincidence in Bill 30 where the Minister of Education sat in this chair and indicated that he would not support any kind of recommendation that had to deal with the right of secondary teachers being allowed to teach in the Roman Catholic school system.

That was his position up until the ninth hour when all of a sudden there was a miraculous conversion, as there has been today, on the road from the Health Minister's office to this particular room as there was back there in Bill 30, as you can recall, when lo and behold the Minister indicated that he would support the NDP amendment.

Mr. Callahan: It's called flexibility.

Mr. Davis: Which allowed for the non-Catholic teachers to have access after ten years and lo and behold, I think that's the kinds of words that one would use, we find another conversion, a conversion from the Minister of Health delivered by his able assistant that now they are going to support a bill of rights. And I think, Mr. Chairman, it shows that the government can be manipulated into a position where it has to reconsider its issues and they are done in the dark corridors of Queen's Park, but I am glad to see, as our Committee indicated after its task force, that it is imperative that we have a bill of rights for the residents.

The Chairman: Thank you for that partisan intervention. I think it's also appropriate that we get this sort of biblical kind of illustration --

Mr. Davis: I recall very biblical quotes.

The Chairman: I have a strange sense that Mr. Callahan perhaps wants to say something non-partisan as well.

Mr. Callahan.

Mr. Callahan: No, it is interesting to sit here and listen to the dinosaurs over there who didn't do anything about this Bill for all the years they had the opportunity to, and when one recognizes the number of elderly who were in fact very badly treated because of that inactivity on the part of the former government, I find it very difficult for my colleagues opposite to even have the gall to come forward and make those statements.

True, a bill is a combination of give and take and I think it is a good Bill. I think it has a lot of merit to it, but I think that it was well past its time, and I would ask you, gentlemen, to consider that when we bring each piece of legislation forward that we have thus far and what we will in the future, we are in fact rectifying a lot of

the sins of the past.

Thank you.

The Chairman: Equally non-partisan. It kept the same good high tone, and I am pleased to see that.

Are there any other comments that anybody would like to make? Any attacks on the Chair or --

Mr. Davis: Can I try?

The Chairman: Mr. Cooke.

Mr. Cooke: Mr. Chairman, I wasn't going to attack the Chair, however I just want to say one thing that I missed that the Parliamentary Assistant had said, and I want to join with her in congratulating groups like Concerned Friends who had been pushing for this and many of the other aspects of this Bill like financial disclosure for many years as well from the community, and I don't think that any one of us in this Committee could take total credit for this bill of rights because, as is the case, quite often the effective lobbying for these types of things occur from groups like Concerned Friends.

The Chairman: Mr. Jackson has a question.

Mr. Jackson: Yes, Mr. Chairman, with respect to subsection 15, the statement on social, cultural and religious interests, is that a statement with respect to being able to receive services in their language of preference and is that the understanding of the mover or the government for purposes of implementation, and then could we respond to the very general question about commitment to bilingual services in nursing homes as produced by the Ministry for posting, et cetera?

The Chairman: Have a start, Mr. Cooke, in terms of the intent of this as to whether or not it was how you saw the limits on this I guess.

Mr. Cooke: Well, Mr. Chairman, I think that basically with regards to religion, for example, that there be a guarantee that members of the clergy have the opportunity or persons from their church have the opportunity to carry out the appropriate functions in nursing homes. That would be one applicable suggestion.

Other social activities that occur, that are organized, that there be the opportunity for those to occur in the nursing home. If there is a nursing home that has, for example, perhaps a group of Italian residents, that there should be the opportunity for members of the various cultural groups to be able to carry out and maintain their

culture, obviously supported by groups that exist in the community and the opportunity for those groups to come into the community and support the residents in their endeavours.

I think those are some mechanisms that this could be implemented.

The Chairman: The Parliamentary Assistant would like to respond to the other question which was the full notion of bilingual posting, et cetera, the information that we have now required.

Mr. Johnson.

Mr. Johnson: Sir, I would not have read item 15 as speaking to the language in which services are provided in the sense of staffing services within the home. This speech to me is in terms of the residents' right to pursue interests rather than the language of service.

The Chairman: Mr. Jackson.

Mr. Jackson: Well then I am really asking a policy question of the Parliamentary Assistant with respect to your understanding of the government's commitment to bilingualism with respect to notice posting and explanation and instruction for residents under the amended Act.

The Chairman: It's not a particularly ominous item, but I will allow it on the cite and so that we can have some discussion in terms of what the implication --

Mr. Jackson: I might ask then what subsection in the mover's opinion or the Parliamentary Assistant's opinion addresses the question I have raised, a patient's right to understand their rights in their own language?

The Chairman: I am not sure that any specific section of the Rights, as I see at the moment, include this or --

Mr. Jackson: Was it an oversight or was it by intention?

Ms. Hart: No, I am not sure that I can fully answer your question. What I can say is that it is the policy of the Ministry of Health from various designated areas of the province to provide services in French. It would be absolutely ridiculous in a home that is totally French or mostly French to post an English language bill of rights, for example.

I mean, it just makes good sense that the bill of rights would be translated.

The Chairman: Does the subsection 6, Mr. Cooke,

around medical questions when it talks about 'being informed of', does that imply that you have to have the capacity to understand as well both in terms of competence but also in terms of language and that sort of thing?

Mr. Cooke: I am assuming that when you read all of section 6, that very few of the rights would be able to be exercised unless the resident was informed in a manner that he or she could understand. So I mean, you wouldn't be able to exercise the right to fully participate in making decisions with regard to medical procedures if you didn't understand what was being explained to you.

So I am assuming that when you read that and coupled it with the introductory section that says 'every licensee shall ensure that the following rights of residents are fully respected and promoted' and after it would obviously have to be made, whether it means bringing in someone from the local multicultural council to help with the translation or whether it means a family member who speaks the mother tongue would come in and act as a translator, however that is done, that it would be the licensee's responsibility to make those kinds of provisions.

It doesn't mean that they are going to have a staff member who can speak those languages because all of us, even in our own constituency offices, have made accommodation for people in our ridings that we can't communicate in our mother tongues with them. We make other provisions, and I am sure that that can be done.

The Chairman: Thank you.

Mr. Davis.

Mr. Davis: Perhaps Mr. Cooke can just clarify for me. In subsection 2 when he talks about 'every resident has the right to be properly sheltered and fed and so forth', does that include the right of the individual to have with respect to their diet to coincide with the religious regulations of their particular faith, whether they are vegetarians or those of the Jewish persuasion?

Mr. Cooke: I very frankly can't answer that question.

Mr. Davis: Do you intend to?

Mr. Cooke: Pardon me?

Mr. Davis: Do you intend to?

Mr. Cooke: It's not one aspect that I considered. It's a reasonable point, but it's not something that I actually considered.

The Chairman: Ms. Hart.

Ms. Hart: I believe there is something in the regulations currently about kosher meals that we are having a look...

Mr. Davis: I was explaining it because when you say they have a right to their -- it's number 15, the right of their culture, social and religious rights, then that could include certain kinds of dietary restrictions or meals that are imperative to their cultural or religious beliefs, and I just want to know if that will be part and parcel of the Bill of Rights.

Ms. Hart: I can't disagree with your point.

The Chairman: I think it strikes me that it would be pushing what is here in precise wording, but in the spirit of the beginning, with full respect to that promoted, those kind of questions are begged by sections 3 and 15 combined.

Mr. Davis: Okay, thank you.

The Chairman: Anything further?

Mr. Jackson.

Mr. Jackson: If I could go to section 16, it talks about informing a resident in writing of any law, rule or policy affecting the operation of the nursing home and of the procedures for initiating complaints.

The onus is on the operator or is the onus on the government to advise them of the law? What is intended by this motion?

The Chairman: The onus and the wording of this section is on the licensee at the outset, so I would presume unless it said specifically that it was the government, then it all goes back to the licensee.

Is that not correct, Mr. Cooke?

Mr. Cooke: That's my understanding. I would assume there is very practical ways of implementing things like that. Whether it's the Ontario Nursing Home Association or if it's a large chain or whatever, that it would be quite easy to pull together brochures that clearly outline what the method of complaints are, and perhaps the ministry would be working with the nursing homes to develop that kind of information.

The Chairman: Mr. Jackson.

Mr. Jackson: Number 18, if I might ask. 'Every

resident has a right to live in a safe and clean environment.'

The Chairman: You have to leave the province I think is what that starts to say.

Mr. Jackson: We will never open the windows in certain communities. Is that what that means?

My question has to do with the fact that I understand that one of the previous Health Ministers, Keith Norton, had initiated a task force that inspected nursing homes for the physical compliance with certain regulations. This was they have been doing ongoing review and research throughout the province. Is that not correct, that that Committee is still operational or has just completed its work?

The Chairman: Mr. Reid.

Mr. Reid: That Committee has just filed its first report on southwestern Ontario.

Mr. Jackson: And is there not within that report the matter of non-compliance and modification with certain regulations?

Mr. Reid: That Committee reviewed the structural components of the nursing homes in southwestern Ontario and gave the minister a report on what should be done to enter the homes or which requirements should be waived.

Mr. Jackson: Okay, well the point I am raising here is that it is my understanding that part of that process was to say that this building cannot be modified without it costing so much that the building would have to shut down or they would have to seek an alternative location. There is some modifications that might fit into that category, and the reason that they do is because they are in non-compliance with the rights which may have certain implications to fire and safety factors. These are modifications.

My question is: To what extent does a patient then have the right to force the nursing home to comply with the rights as written when, in fact, we have another committee or another study group, or whatever they are called, making recommendations to the Minister for modifications to the regulations which may be deemed safe or unsafe but practical?

I mean, would I as a resident be able to say, I don't care what your committee is recommending to the Minister. I expect to have a certain type of access and egress to my building and I expect certain fire regulations to be upheld, period.

Does this Bill give that resident the right to live in an accommodation that is safe to that extent? Have you lost your flexibility, because that is the way I read that.

The Chairman: Ms. Hart.

Ms. Hart: I am not sure I entirely get your point, but this bill doesn't take away any rights that people already had in the Act.

Mr. Jackson: No, it gives them some new rights.

Ms. Hart: From what I understand, you are saying that because of this task force, that they have fewer rights than they had before?

Mr. Jackson: No, I think you missed my point. My point is that buildings, either they comply or don't comply with certain provisions, whether it's for elevators, there is non-compliance, for fire safety. Various factors.

Now this committee has made recommendations to the minister that certain modifications and compliances cannot be met. They just cannot. My question is, as I read this in a literal sense, I am entitled to a safe environment which means compliance with the building code or the safety code as set out, and yet I have somebody else from the Ministry saying that we will agree to tolerate a modification to that minimum standard. These are below the minimum standard but understandable. That is my point.

Perhaps the Ministry would like to respond. I think you understand my point.

Mr. Reid: I understand the point you are trying to make. The Root Commission Report will recommend or has recommended exemptions for certain homes for the minimum requirement. Those recommendations are based on assessment by that committee that granting such a waiver will not impinge on the health and safety of the residents of that home. The Minister will not grant an exemption to a home which will result in a home which is not fire safe.

We are granting exemptions, for example, where the corridors are an inch-and-a-half too narrow. They are still five-foot-ten-and-a-half as opposed to six feet.

The Chairman: As I understand it, there is nothing written up in an enforcement section of this as yet, so this is just a statement of rights at the moment, but there would be nothing to preclude a resident from disagreeing with a recommendation that that was not a safe situation, and therefore to trigger, one would presume, the whole inspection process, et cetera, to make a determination on

that, but in the end, isn't everybody restricted by whatever the inspections say and then whether the compliance sections or all that sort of thing has been handled?

Mr. Jackson: That doesn't state that. If we have a building code in Ontario and someone has said that you do not have - for whatever reason - you do not have to meet that building code minimum standard and there are damages or losses attributed to the fact that there was non-compliance, who is liable? Now obviously the nursing home is no longer liable because the government said it was okay for you to operate in that manner.

That is not my point. My point is has the Ministry considered this because they will be forcing the government to take on the liability for allowing non-compliance and therefore the potential for risk no matter how significant the two or three inches of the corridor may be short, if you have to evacuate 25 residents from the third floor of the building. That is the purpose.

Mr. Reid: That is the case currently where the nursing homes in the province have been granted exemptions under the Act and regulations where, in effect, the Ministry has assumed liability for not having an elevator. That has been --

Mr. Jackson: Well, it is the Ministry's understanding of the implications of this as well.

Ms. Hart: It will be involved in the fact that an exemption has been granted that was given to it.

Mr. Jackson: That is what I wanted to hear.

Thank you.

Mr. Mitchell: Mr. Chairman, I quite agree with my colleagues that the statement of rights certainly deserves support, but just listening to the discussion that has been going on here around the table, I am not so sure that when you try and make a statement of rights, that somewhere along the line you don't miss out or leave out things and then someone can come along later on and say it isn't in there so it is not covered.

I have to wonder, and this is purely a questioning on my part, but surely then there should be some other statement in there along with it which says that notwithstanding all of this, that all residents of nursing homes have the same rights and privileges as every Canadian citizen under the law or whatever.

Mr. Callahan: (2a) says that basically.

Mr. Mitchell: Well, I don't read it that way. Am I wrong?

The Chairman: There is a (2a).

Ms. Hart: Number 12.

Mr. Mitchell: I read that, Mr. Chairman, very carefully. I still don't see it in there.

Mr. Cooke: Section 12.

Mr. Mitchell: I guess it is implied. I guess what I am looking for is something stronger than that. Some basic overall statement, and it may be that it's covered there, Mr. Chairman. I just didn't feel it was strong enough.

Mr. Callahan: The Charter of Rights.

The Chairman: Always open to an amendment.

Mr. Cooke: Supreme law of the land.

The Chairman: Any further discussions? The Charter of Rights? Supreme law of the land. It applies to every Canadian citizen.

Mr. Jackson: Part of the amendment to Mr. Cooke's amendment or are we going to deal with -- I said I would take your guidance on that.

The Chairman: My suggestion is we vote on his and then deal with yours subsequent to it because it doesn't negate. It enhances or adds to it. Would that be all right?

Mr. Jackson: I prefer to just move it and deal with it since it remains --

The Chairman: Sure. There are two amendments. We can do one of two things. Should we do something after 19? Why not move your one that would be replacing 20 or making a new 20.

Mr. Jackson: Yes, Mr. Chairman. I would like to move an amendment to Mr. Cooke's amendment. I move that subsection 1a(2) of the Act as set out in section 2 of the Bill be struck out and the following substituted therefor:

"20. Every resident is entitled to have their assessed needs met."

The clerk has copies and they have been circulated.

The Chairman: I guess the reason that it looks a.

little strange is not having passed the other replacement section, it has to be to amend Mr. Cooke's motion to include a section 20 which would read, and I think that might be the easiest way to do it.

Would that be all right, to just change the wording that way because otherwise I'm dealing with not an amendment to Mr. Cooke's motion but an amendment to the government motion wiping everything else out and putting in a 20, so it makes more sense to say that you are amending Mr. Cooke's motion to have a new section 20 which would read "Every resident is entitled to have their assessed needs met".

Is that all right with you, Mr. Jackson, if we do it that way?

Mr. Jackson: Yes, something like that.

The Chairman: This is to amend Mr. Cooke's motion to add a new subsection 20 which would read "Every resident is entitled to have their assessed needs met".

Would you like to speak to your motion, Mr. Jackson.

Mr. Jackson: Thank you, Mr. Chairman. I just received some good counsel from Ms. Baldwin, which is her habit.

The Chairman: Yes, invariably.

Mr. Jackson: And she has suggested that I indicate that "every resident is entitled to have his or her assessed needs met" and by 'assessed needs', Mr. Chairman, I am talking about the psychological and physiological diagnosis as determined by a qualified physician. That is what I mean by 'assessed needs' and perhaps that could be incorporated into the amendment if legal counsel were to be given sufficient time to work with that.

However, I will speak to the amendment in hopes that it will pass and then we can address the language in typing it up.

Mr. Chairman, the purpose in tabling this amendment at this point in the Committee's deliberations, the primary purpose is because this Bill is lacking a specific context with respect to the bill of rights. We have dealt more with how we monitor nursing homes for their non-performance and it is important that we have a clearer statement that addresses the assessed needs of residents.

We have tightened up the inspection process with this Bill. Complaints have to be responded to and suggested remediation as set out in this Bill, and yet if that complaint comes back and asks for additional staffing, in

order to respond to that, there is no responsibility within the legislation to deal with it. It is totally silent. We have got the financial accountability, but we do not deal with whether or not we would do if there are losses. Once again the Bill is silent on that.

We talk about public hearings, but again there was nothing that that section which brought that back to the fact that if the point of the public hearing resolves that the assessed needs are not being met, what is to be done about it. The government has been able to avoid any accountability in that regard within the context of this Bill.

I have referred earlier to the fact that the OMA physicians when they attended before this Committee in hearings, that about 30 per cent of the residents required chronic care and they are therefore not having their assessed needs met. That should be of considerable concern to this Committee, and how solid can a Bill of Rights be if we are not in some way putting some pressure on the government to be accountable in this area.

This bill of rights is only good as the real intention of the government to meet that obligation, and that is why I have tabled this amendment. It in a sense becomes an acid test for the entire Bill. I sense that there isn't a proactive element to this Bill. We are so preoccupied with telling nursing homes what it is or trying to catch nursing homes from what they are not doing. We are not really assisting those nursing homes which are trying with some of their programs to meet those assessed needs, and yet there is no real vehicle for which they can - and the advocacy groups that would work with those homes and the residents' councils that would work within those homes to advocate for the improved funding arrangements, improvements in staffing which is all tied to government funding.

The role of the government in this bill I believe must be that we should have sufficient resources to meet that need, and if we are not prepared to tell them what their job is and we are not prepared to fund them, why are we only attempting here in many elements of the Bill to just penalize it.

I hope that Mr. Cooke will consider favourably this amendment since he has, in my opinion, a genuine interest in the residents, and perhaps he might even consider an amendment to my amendment which would -- each resident should receive sufficient funding from the Ministry to have their assessed needs met, but I will leave that to Mr. Cooke's prerogative.

I would also request, Mr. Chairman, a recorded vote on this amendment.

The Chairman: Sure.

Mr. Cooke: A point of order. I would just like to know what the amendment is, since there is an amendment before us.

The Chairman: It is to amend your amendment to create a new section 20 which should read, "every resident is entitled to have his or her assessed needs met".

Mr. Cooke: But then Mr. Jackson said something about psychological and physical needs that he wanted that added as well.

The Chairman: He said that he would wait to see if you would like to amend it. I think the easiest way to deal with that is to get an idea of where the other two parties are going on that. If it looks like that is the only hang-up, then we will draft an amendment, and if it doesn't look like it is the problem, then we --

Mr. Jackson: I don't want to burden Ms. Baldwin with that amount of exercise if the Bill lacks support from the government.

The Chairman: Mr. Cooke.

Mr. Cooke: The other question I would have is if we are going to proceed without a problem, it should be in the same wording as the rest of the rights, but I do think that if one reads the section that says "every resident has a right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs" and then if you also read section 7, "every resident has a right to receive reactivation and assistance towards independence consistent with his or her requirements", that Mr. Jackson's concerns are in fact addressed.

The only thing that is different about his is that his is so general as to -- I am not entirely sure what it would mean.

The Chairman: Mr. Reycraft.

Mr. Reycraft: Mr. Chairman, I have listened carefully to Mr. Jackson's explanation of his amendment, and as I interpret what he is saying, what he is suggesting is that we should shift the focus for providing adequate care from the operator of a nursing home to the provincial government. That seems to be what I am hearing.

As I read what is before us and I listen to his explanation, I find it very difficult to see what would really be achieved by adding this as a section 20 that is

not already achieved, for example, by subsection 2 of Mr. Cooke's amendment, where we say that "every resident has a right to be properly cared for in a manner consistent with his or her needs". I simply don't see what this amendment will do that subsection 2 doesn't already provide.

Mr. Jackson: That question, Mr. Chairman, is Mr. Reycraft then suggesting that I amend section 2 and include their psychological and physiological assessed needs?

The Chairman: Would you like to respond, Mr. Reycraft.

Mr. Reycraft: Well, Mr. Chairman, when we talk about someone's needs, the term is fairly inclusive. As soon as you start to build in specifics, I think there is a great danger that you automatically exclude certain items that you don't want to exclude, and to answer your question, Mr. Jackson, no, I am not suggesting that you do that.

The Chairman: Ms. Hart.

Ms. Hart: If I might also point out the preamble for the initial section 1a which I think covers Mr. Jackson's concern, 'fundamental principle to be applied in the interpretation of this Act and the regulations is that a nursing home is primarily the home of its residents, and as such, it is to be operated in such a way that the physical psychological, social, cultural and spiritual needs of each of its residents are adequately met and that its residents are given the opportunity to contribute in accordance with their ability to the physical, psychological, social, cultural and spiritual needs of others'.

In view of that and in view of the sections that have also been pointed out by Mr. Cooke and Mr. Reycraft, the government will not be supporting this amendment.

The Chairman: Mr. Cordiano.

Mr. Cordiano: Well, just very briefly, I want to enquire with respect to the question of having responsibility of the Ministry, clearly the needs of the others are met. Obviously that in the final analysis, the entire society is responsible for breaking it down even further and further.

You also have to look at the section where the Minister may, and I think this section was passed, section 10 of the Bill where the Minister may answer to an agreement with the licensee for other services that are not provided by the regulations in the Act.

Obviously in the final analysis, the Minister may be able to include what are the needs, but you are not

specifying those needs in detail in that section or subsection that you are referring to in the heart of that amendment, and further, then the Minister may be able to look after those needs by providing extra services.

Mr. Jackson: Mr. Chairman.

The Chairman: Mr. Jackson.

Mr. Jackson: Well, I listened to the government, but it is very clear that this amendment has some funding implications and therefore I am not surprised that they do not support it. I understand Mr. Cooke has difficulty with providing the kinds of additional funds for profit of nursing home operations. He is entitled to his belief in this regard; however, at the core of that concern is the fact that we still have these units in operation in Ontario and we have residents whose needs are changing during the course of their tenancy, as it were, in their residence.

It strikes me that if we are going to have a vehicle within this Bill which is specific and therefore necessary to say that residents will be able to have their assessed needs met, that it implies that there is a need for a change in staffing; it may imply that there is a need for special services; it may imply a need for special equipment. All of these factors may be a consideration with respect to ensuring that a resident's assessed needs are met.

Now that would be very disturbing to the government of course, but it shouldn't be disturbing to anyone concerned about some vehicle in the Bill which ensures that those assessed needs are met.

I don't believe that section 2 covers adequately the point that I am raising since my definition of 'assessed need' is one based on a qualified assessment by a physician, and not necessarily as the Parliamentary Assistant has referred to these rights as a necessary symbolic tool for educational purposes. We are talking about something far more specific and far more accountable, and for us to avoid this opportunity when the Bill is open to us, to put this amendment I think would be irresponsible.

If ultimately this clause is used as a way by which residents' councils, advocacy groups and the nursing home operators themselves can respond to the funding issue and the staffing issue because the assessed needs of certain residents are not being met by the current funding levels.

If that is frightening the government, I understand, but in no way should it diminish our responsibility to assist the residents at this time.

The Chairman: Mr. Davis.

Mr. Davis: Thank you, Mr. Chairman. I would just like to echo and concur with my colleague. It seems to me that if as a government, and Mr. Cooke indicated as a spokesman for the government, that it's incorporated in the Act and that I can't see any reason why we don't spell it out again. It seems to me it is pretty important.

I think my colleague indicated that sometimes when you begin to deal with the bill of rights, you leave things out and when it's not there, it's very easy to say well, that's not what we meant. Mr. Chairman, you have been in this Legislature a lot longer than some of us, and I know that you are quite well aware that as pieces of legislation are passed and then become effective, and I think I can recall a number of times in the House, Mr. Chairman, where you have risen in debates to point out that that is really not what the piece of legislation means and that wasn't the intent when it was formed.

It seems to me that if, as legislators, and if the government really believes in a bill of rights, I mean, if that is the integrity of a government, then it seems to me that somehow we have to include in this bill of rights, either through Mr. Jackson's amendment or reamending one of the sections from 1 to 19, as Mr. Reycraft seemed to indicate and then backed away from it, that the qualified assessment, physiological and psychological needs of the individual are very important.

Either we care or we don't care, and it seems to me that what seems to be the thrust of this Bill is an intent on behalf of the government and the legislators to say 'we really care', and I think that if that is the underlying premise, it is our concern to ensure that the individuals in the nursing homes receive all the rights that belong to them, that the proper care is delivered to them whether it be in nursing homes that are non-profit or profit.

I think that is the bottom line, that they receive the adequate care and the care that is necessary. That it seems to behoove us that we have to incorporate into this particular section some understanding of the physiological and psychological needs decided by qualified assessment. Otherwise, I think that we are then really negating some of the impact of this piece of legislation, and I think that with that kind of incorporation into the legislation, it certainly will assist the advocacy groups, it certainly will assist the councils to really ensure that people in nursing homes are well cared for and that all their needs are met.

So Mr. Chairman, I am happy to support the inclusion however we decide to include that amendment.

The Chairman: Thank you, Mr. Davis.

Any further comment? I see none.

Now what we will do is take Mr. Jackson's amendment, which, as you recall, is to create a new sub 20 reading 'every resident is entitled to have his or her assessed needs met'.

It is a recorded vote at the request of Mr. Jackson. All those in favour of Mr. Jackson's amendment, please indicate.

The Clerk: Mr. Mitchell, Mr. Jackson and Mr. Davis.

The Chairman: Thank you.

All those opposed.

The Clerk: Mr. Reycraft, Mr. Cordiano, Mr. Callahan, Ms. Hart, Mr. Cooke and Mr. Allen.

Defeated 6 to 3.

The Chairman: 6 to 3. Glad to be of assistance. If the Clerk relies on me for math, we are all in big trouble. I want you to know that.

The motion is defeated.

Back to Mr. Cooke's amendment to section 1a sub (2). Any further discussion? Now we will take a vote on that.

All those in favour of Mr. Cooke's amendment, please indicate.

Motion is carried unanimously.

Shall 1a(1) and (2) as amended carry?

Carried.

Mr. Cooke: I do have an amendment to section 1a of the Bill as set out in section 2.

The Chairman: This is an old one?

Mr. Cooke: It was in the original package attached on the last section of the bill of rights. It has been separated out.

I move that section 1a of the Act as set out in section (2) of the Bill be amended by adding thereto the following subsection:

"(2b) A licensee shall hire enough well-qualified persons to staff the nursing home to ensure the rights

set out in subsection (2) are respected and promoted."

The Chairman: Thank you, Mr. Cooke. I forgot that we had that. That is on your initial package. I think it is page 5 or whatever of the NDP package.

Would you like to speak to your amendment, Mr. Cooke?

Mr. Cooke: Mr. Chairman, the purpose of this amendment, I think is self-evident. It is an attempt since the Bill as presented to us doesn't deal with staffing, the staffing regulations are in the regulations of the Act. I thought it was important that there be some message that came out of this Committee that addressed in as specific way as possible the staffing issue, even though this is a very general way of addressing the staffing issue.

I don't know of any other way that it could be dealt with under Bill 176. I hope it will be carried because I think, well, it will be difficult in itself to enforce. Again I think it goes hand in hand with the bill of rights and would be an important statement coming out of this Committee.

The Chairman: Thank you, Mr. Cooke.

Ms. Hart.

Ms. Hart: Thank you, Mr. Chairman. While I can appreciate Mr. Cooke's point, our difficulty with this section is that it in effect forces the nursing home operators to hire more staff without a commitment for funding and I think that that is quite unfair to the operators.

The whole thing is premature in that the funding mechanisms are being reviewed in the review of the Extended Care Act, and it is our view that it would be more appropriately included at that time.

The Chairman: Mr. Jackson.

Mr. Jackson: Thank you, Mr. Chairman. I find myself in agreement with Mr. Cooke on the issue of sufficient staffing. It is something which we have been commenting on throughout these hearings and it is an issue which clearly became a central theme in all the presentations that were made before this Committee.

For that reason, I have drafted an amendment which I have tabled with the Chairman which I will be moving immediately following this amendment which sets out that the Ministry of Health shall be a signatory to all agreements between a nursing home and a resident upon admission under this Act. And it is very clear that that amendment will

achieve exactly what Mr. Cooke has suggested, but doing it in a more general way which should be acceptable to the government.

For that reason, I will not support his amendment but would suggest that you consider supporting our party's amendment which in fact clearly sets out that the Ministry would have a responsibility to ensure that funding levels allow a nursing home operator to hire sufficient staff, and without the other shoe dropping, the amendment that Mr. Cooke proposes would be deemed punitive and therefore work counter to the interests of the residents we are here to serve.

The Chairman: Thank you. There is some discussion with me as to whether or not it is in order because it would require expenditure of funds. My feeling on that is that it in fact is in order because it is not requiring, within its own wording, directly the Minister to add new funds. In fact, it may, as Ms. Hart has been saying, put the nursing home in a position of having to add extra staff without any new funds, and unless there were another amendment which indicated that it was as a result that there had to be changes in government policy on this, then it is in order and the only party that can move the following, the other motion, would be the government and not a member rather of the opposition parties, so it is in order.

Any further discussion?

Mr. Davis.

Mr. Davis: So in effect what the government representatives are saying is that even if this were passed, they would not flow any additional funds to the nursing home to ensure that there is quality care for the patients?

The Chairman: No, they haven't said that. All they have said is they are not guaranteeing it, as I understand it.

Mr. Davis: Well, that is playing word games.

Mr. Callahan: You are playing word games.

Mr. Davis: I am not playing word games. That is what she said.

The Chairman: You know what she said.

Mr. Reycraft.

Mr. Reycraft: With respect to Mr. Cooke's amendment, Mr. Chairman, and not to the rhetoric of Mr. Davis, is there a definition of well-qualified persons in the Act or the

regulations, and if there is, where is it and if there isn't, what is Mr. Cooke's intention?

Mr. Cooke: I doubt very much whether there is a definition in the regulations of well-qualified staff, but the meaning of that obviously would be that if you were going to be hiring additional nursing staff, then there are requirements for the types of nursing staff and hours and so forth. If you were going to be hiring an adjuvant, then there is obviously requirements for that or a recreational person, then we know what type of work they do.

I mean, in order to fully address your question, we would have to put definitions for each type of staff, so this was just stating it in a general way.

The Chairman: Mr. Callahan, is there a supplementary to that that you want to raise?

Mr. Callahan: Mr. Cooke, I don't mean this in any facetious way, but if you put that in there, hire enough well-qualified persons to staff a nursing home, does that anticipate that one would have to have a review of all of the nursing homes to determine whether or not the people who are presently on staff fall within that category?

Mr. Cooke: They already do that. The Ministry already does that.

Mr. Callahan: Well, without a definition of well-qualified, how do they determine that to be the case?

Mr. Cooke: In terms of registered nurses or registered nursing assistants and aides, those things are already checked when the Ministry inspectors go in and look at the staffing records.

Mr. Callahan: But they are not the only persons that staff the nursing home. In addition to that there were the other people as well. Are you suggesting --

Mr. Cooke: Perhaps Mr. Reid can answer that, but I assumed that there was already a pretty good idea of who works in the nursing home when the annual inspection takes place.

Mr. Reid: I think one of the difficulties that Mr. Callahan is getting at, Mr. Cooke, is that the section has written, has a subjective component to it as in well-qualified. Yes, we do indeed assess the qualifications of the staff currently in the nursing home and based on the minimum criteria, but that is not to say our assessment would meet yours in terms of are those staff well-qualified.

Mr. Cooke: Well, if it helps the government members

on the Committee, I can change the amendments so that it says a licensee shall hire enough persons to staff the nursing home to ensure the rights set out in subsection 2 are respected and promoted.

The Chairman: Is that your amendment?

Mr. Cooke: I mean, if that gains the consensus that we have been striving to develop on every section of this Bill, I have been co-operative and I will be co-operative again.

The Chairman: Mr. Reycraft is still on my list, but Ms. Hart wanted to respond.

Mr. Reycraft: You are suggesting we delete 'well-qualified'?

The Chairman: Sure.

Ms. Hart.

Ms. Hart: That doesn't address my difficulty in that this is I think forcing the operators to do something where there is no guarantee of funding.

Mr. Cooke: Well, that is a problem with anything that we have passed on this Bill. We don't have the ability in the opposition parties to do anything about the funding, and it doesn't matter whether we are passing nursing home legislation or anything else we pass. It is ultimately up to you and your government to determine what the funding arrangements are, and I understand the rules of the game, but if we didn't move amendments on anything for fear that you might not flow additional money, we wouldn't be passing any progressive amendments. We pass them and we assume the government is going to act in good faith and follow through.

The Chairman: Ms. Hart.

Ms. Hart: That is why the whole question of funding is being reviewed by Mr. Van Horne.

The Chairman: Mr. Jackson.

Mr. Jackson: Mr. Chairman, the question I have is I want to use an example and get an understanding from the Ministry if this is in fact how this would read or how this would be implemented if passed.

Take a situation where you go into a nursing home and there is an assessment done where 30 per cent of the residents require chronic care attention, which is the point I had raised with my previous motion. Does that mean that with this amendment, that the requirement of an additional

three staff in order to cover off the time because the designated chronic care, the licensee would then have to hire those individuals because the residents have been assessed on that basis of requiring additional attention?

Ms. Hart: I would think it might work, yes.

Mr. Cooke: That already happens.

Ms. Hart: Yes.

Mr. Cooke: But it already happens. If you go in and assess -- I mean, if all the letters I have received from your branch over the last ten years mean anything, when I get a letter back and it says that the average nursing hours per resident are 2.1 because the assessed need has been higher than 1.5, then that is what already happens in terms of nursing care. This theoretically should have no impact at all except to reinforce the current Ministry policy.

Mr. Jackson: Well, Mr. Chairman, you know, why is this becoming an 11th hour revelation to Mr. Cooke? That is the point on which I was trying to tie down in specific language in this Bill that the assessed needs of a resident will be met.

The other shoe that drops is that the licensee will be required to hire sufficient staff to do that, and then if we make the government a signatory to the contract that every resident in Ontario signs, now we have got financial accountability for nursing homes and for the residents.

Now why Mr. Cooke would throw this out on the table without seriously considering the other two amendments is beyond me.

The Chairman: Mind you, this was on the table the first day and the discussion about assessed need is yours to determine how it's best handled, and I thought we just had that debate. I may be wrong.

Mr. Jackson: It would seem odd that at the 11th hour we are finding out --

The Chairman: It is 11:15 actually.

Mr. Jackson: It is the 11th hour, Mr. Chairman.

The Chairman: Is there further debate on Mr. Cooke's proposed amendment (2b)?

Mr. Cordiano: Does it include the words in the amendment or not?

The Chairman: I am not sure. Does it include the

words 'well-qualified' or does it not?

Mr. Cooke: I was looking to some direction of whether any one from you to the other parties was willing to support it with the word 'well-qualified' out. I gather the governing party is not and I am not entirely sure where the Conservative Party is standing on this, so I will just go ahead with the amendment as presented.

The Chairman: Thanks, Mr. Cooke.

Mr. Reyecraft: Will we put it back in?

The Chairman: Well-qualified was in. It was not taken out.

Mr. Reyecraft: Then, Mr. Chairman, I have a real concern, and it is a different one than the one that Ms. Hart has expressed. I have had the opportunity over the last several years to become fairly familiar with the people who staff a particular nursing home in Wardsville where my grandmother was a resident for a number of years. Now that is a small rural community, population about 950.

It is very difficult and could on many occasions be impossible to find people who had some kind of paper qualifications, some kind of training that the operator of that home might require.

Now what would Mr. Cooke suggest happen in a situation where an operator was unable, not unwilling, unable to employ qualified staff? Would he be open to charges; would he be required to close the home? I have a real concern with adding that to the Bill.

The Chairman: Mr. Cooke.

Mr. Cooke: Mr. Chairman, I have been convinced by my colleague. The staffing regulations under the amendment can deal with the issue of qualified, so I would be pleased to accommodate Mr. Reyecraft by withdrawing the words well-qualified so that the amendment will now read "A licensee shall hire enough persons to staff the nursing home to ensure that the rights set out in subsection 2 are respected and promoted".

The Chairman: Thank you, Mr. Cooke.

Any further debate? I see none. All those in favour of Mr. Cooke's motion, please indicate. Down.

Those opposed?

Approved 7 to 2.

So section 2 (1a), 1 and 2 as amended, carried.

We will now go to Mr. Jackson's motion. Section 3 itself is not to be amended.

Shall subsection 3 carry? Carried.

Now Mr. Jackson is going to move a new (3b), as I understand it.

Mr. Callahan: Mr. Chairman, a point of order on that amendment of Mr. Jackson's. I would suggest that that is not --

The Chairman: What amendment?

Mr. Callahan: Mr. Jackson's, the one --

The Chairman: We don't have it yet.

Mr. Jackson.

Mr. Jackson: Thank you, Mr. Chairman. I move that section 2, subsection 1a(3) of the Bill be amended by adding the following subsection (3b):

"The Ministry of Health shall be a signator to all agreements between a nursing home and a resident upon admission under this Act."

The Chairman: Thank you, Mr. Jackson.

Point of order, Mr. Callahan.

Mr. Callahan: Yes, Mr. Chairman, I will ask you to rule on the question of whether or not by adding the Ministry as a party to a contract, we don't in fact place the Crown in the position of potential responsibility and, i.e., potential payment and therefore counter and against the Rules of Order and the government is the only one that can move a section that deals with expenditures of money by the firm.

Mr. Jackson: Because of liability?

Mr. Callahan: What you are doing is by putting them on as a potential -- or by a signator to the agreement, you are putting them in the position of being potentially responsible for payment of money, yes.

The Chairman: Do you have some argument on this, Mr. Cooke?

Mr. Cooke: Mr. Chairman, I don't intend to support this amendment and I think partly because of the reason that

the Member from Brampton is raising, but also if one accepts the fact, and I don't entirely accept the fact that nursing homes should be in the private sector, but that is the reality in Ontario, that 94, 95 per cent of the nursing homes are in the private sector.

It seems rather ludicrous to me that we would then put a provision in the Nursing Home Act that the private sector gets to reap financial benefits but the Minister of Health has to accept financial liabilities. You can't have it both ways, and that is exactly what Mr. Jackson is trying to do. He is trying to maintain nursing homes in the private sector but have the Ministry of Health accept the financial liability by being a signator to a contract.

He knows as well as I do that this recommendation that has come from the Ontario Nursing Home Association would be used in such a way as to make it impossible for residents to exercise the rights under a contract. The first thing they would be told if they wanted to take civil action under a contract against a nursing home operator, the first thing he would be told is no, you have got to take the action against the Ministry of Health or the nursing home would then take the action against the Ministry of Health and in effect, the rights of the residents to exercise their rights of a contract would be so lost in the courts that it wouldn't ever be exercised.

But my major concern with this amendment is that what he is doing is that he is socializing the liability in the private sector for privately-owned nursing homes, which I am totally opposed to. If they are in the private sector, then the private sector has to live with the regulations and the consequences of the regulations, and if they don't like it, they should support the proposal --

The Chairman: First, the point of order, which is what I thought you were going to restrict yourselves to debating, and is there any more discussion about that point of order?

I am seeing none.

It is a very awkward type of thing to try and make a determination on, Mr. Callahan.

Mr. Jackson: Mr. Chairman, a comment. I was not given an opportunity to comment.

The Chairman: I just asked and then you didn't, but go ahead.

Mr. Jackson: I had asked a previous question of the Ministry with respect to a specific clause which implied that the liability, the specific language implied liability

to the Ministry because it had an implicit waiver set forth. I believe that this amendment follows in the same legal context and therefore would be deemed valid and a wait to ruling.

The Chairman: In the Standing Order under section 15, it says any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds shall not be passed by the House, et cetera, et cetera.

I think it is not possible for me to say that this necessarily will specifically direct the allocation of public funds and therefore it would be better, rather than my ruling an out of order, although it is clear to see how it might do so, that you would be better to deal with it on its merits than me to rule it out of order. So it is in order and Mr. Cooke has had his entry into the debate on the substance of the matter.

Mr. Jackson.

Mr. Jackson: Thank you, Mr. Chairman. We have for now approved the bill of rights for the residents, but we have not approved an appropriate funding scheme tied to the residents' assessed needs. We have given the Ministry of the power to enter into agreements for the provision of additional services within this Bill, and yet we have not established or defined those basic services or a definition of quality care which is something that we have been personally appealing to the Minister for some weeks to allow that to form part of the contract.

The one thing we have not done is to tie the bill of rights and all the expectations of such a bill back to the Ministry. The Minister continued to blame the nursing homes rather than deal with its own policies and whether those policies are adequate for the residents of nursing homes in Ontario.

I am recommending that the Ministry be a signatory to the contract, that the bill of rights is to form part of the contract with the nursing home. It should be set out in the contract. If the Ministry is opposed to being a signatory to the contract, what the Ministry would be saying is that it doesn't want to be directly held responsible or meet the obligations which are set out in the legislation.

Therefore, in my opinion, we need to make the Ministry an identified part of the contract and to jointly accept responsibility for this Bill, and as I indicated before, not to advocate the responsibility to ensure that the rights of residents are upheld and that the necessary funding would flow in order to achieve the staffing levels necessary to provide the assessed needs of our residents.

The Chairman: Ms. Hart.

Ms. Hart: The Ministry under the Act is already charged with the responsibility for enforcement, and it is the government's view that it is totally unnecessary to make them a signator, make the Ministry a signator to all agreements and conceivably can put them in a very difficult situation of conflict, being in a position of prosecuting its co-party to the contract.

The Chairman: Thank you, Ms. Hart.

Mr. Jackson: Point of clarification. Is that not the position you are already in when you license a nursing home operator? Then you inspect him and then you prosecute him and then you withdraw his license? I mean, did you not just --

Ms. Hart: No, I didn't. It is quite different being party to a civil contract.

Mr. Jackson: Finally, Mr. Chairman, Mr. Cooke made the etiological reference to the impact of this, and I might remind him that there are several examples in government currently, and I submit that the one where we have the different ambulance service in Ontario where this principle is applied for private ambulance service contracts with the Ministry.

The Chairman: Anything further? Now if we will take a vote.

Mr. Jackson: A recorded vote, Mr. Chairman.

The Chairman: A recorded vote on Mr. Jackson's motion. I should have probably taken Mr. Cooke's motion first because he had actually changed 3 rather than this new (3b). I will have to reopen that because I took a vote on 3, as you may recall.

Mr. Jackson: I can make this --

The Chairman: We will deal with yours first.

Mr. Jackson: All right.

The Chairman: Because we are there, as it were.

All those in favour of Mr. Jackson's motion to create the new (3b) please indicate.

The Clerk: Mr. Mitchell, Mr. Jackson and Mr. Davis.

The Chairman: Those opposed.

The Clerk: Mr. Reycraft, Mr. Cordiano, Mr. Callahan, Ms. Hart, Mr. Cooke, Mr. Allen.

Defeated 6 to 3.

The Chairman: Thank you very much.

Motion to reopen sub (3)? Agreed? Agreed.

Mr. Cooke, would you like to move the motion?

Mr. Cooke: I move that subsection 1a(3), (4), and (5) of the Act as set out in section 2 of the Bill be struck out and the following substituted therefor:

"(3) There shall be a written contract relating to the admission of every resident to a nursing home.

"(4) A contract entered into in accordance with subsection (3) or (7) shall set out,

"(a) the rights of the resident under subsection (2) and the obligation of the licensee to respect and promote those rights;

"(b) the information necessary to enable the resident to make a complaint regarding the nursing home to the Ministry;

"(c) any agreement for additional services and the charges for those services; and

"(d) the name and address of the person who will act, if necessary, as the representative of the resident for the purposes of this Act and the regulations.

"(5) The contract shall be reviewed annually by the resident or the resident's representative and the licensee.

"(6) The licensee shall post a copy of subsections (1), (2), (3), (4) and (5) in a prominent place in the nursing home and;

"(7) Every licensee shall, within ninety days after the coming into force of this Act, enter into a written contract with every person who is a resident at that time and has not entered into a contract under subsection (3), or with a representative of the resident, relating to the services provided by the nursing home. "

Mr. Jackson: Mr. Chairman, could we have the wording for sub (4) sub (c) and (d)? I don't have that on the original tabled motion.

Mr. Cooke: I believe these were handed out, but just in case they weren't, it would be (4) sub (c) and (d):

"Any agreement for additional services and charges for those services and;

"(d) the name and address of the person who will act if necessary as the representative of the resident for the purposes of this act and the regulations."

If I might, Mr. Chairman, --

The Vice-Chairman: Has every member of the Committee held that full text?

Mr. Jackson: I don't.

The Vice-Chairman: You have a copy, though, with the full text?

Mr. Cooke: Yes.

The Vice-Chairman: Okay. The Clerk will be providing us with copies imminently.

Continue, Mr. Cooke.

Mr. Cooke: Just to point out sub (d), there was a suggestion made a couple of days ago when we were discussing the problem of the resident's representative that in order to get around some of the problems that many Committee members had expressed, that if in fact we made provision for that in the contract, that would get around a lot of the legal problems that will be resolved at some point in a report that will come out of a review that's currently occurring within the Attorney General's Ministry.

The other sections of the contract are pretty straight forward. It includes the bill of rights, any additional charges and a mechanism for proceeding with complaints and the information necessary to enable a resident to complain. And this section obviously is one of the mechanisms, one of the three mechanisms for enforcement of the bill of rights.

The Chairman: Ms. Hart.

Ms. Hart: If I might respond to that. I don't know whether it is my lawyer's heart or whatever it is, but I always think that it is a good idea when you have two parties to an agreement, that that should be set down in writing. It is fairer to the operator and to the resident,

and it enables everyone to know what is expected of them, and I heartily endorse this amendment.

The Chairman: Mr. Jackson.

Mr. Jackson: I have a question, Mr. Chairman. Is this going to be a standard contract produced by the Ministry and made available to the nursing homes?

Ms. Hart: Might I respond to that?

The Chairman: Ms. Hart.

Ms. Hart: Thank you. There is no intention to have a standard form for the contract. Some of the provisions that go into the contract will be specified in the regulations upon consultation, of course.

The reason why there will be no standard form is that there are many, many different kinds of nursing homes in this province, residents with different needs, and it is thought that it would be fairer to leave it to the nursing home operators and the residents to come up with the terms that best fit the needs of that particular home.

The Chairman: Mr. Jackson.

Mr. Jackson: That implies there is going to be some sort of consultation with the residents' council. Am I reading you wrong or you are going to put in a minimum requirement under the 'readys'? I mean, who is proofreading this contract? I mean, where is the accountability here?

Ms. Hart: Ideally the residents' council would have input.

Mr. Cooke: The minimum requirements to this amendment as well.

Ms. Hart: Yes, the minimum requirements are also in the amendment.

Mr. Jackson: Well, I am quite familiar with contract law. I just want to know who is going to draft it and then they are all signed and they have complied, but who is checking to ensure how they are drafted before the -- because they are going to go up and say the government said to sign this. Please read it. It is going to be seven to eight pages long and you are going to ask a resident to do that.

I have designed contracts before and I know the problems and the language problems that can be put into them. Why are you reluctant to develop a standard contract for Ontario? We can do it in most other tenancy agreements

where there are certain clauses I am sure that creative legal minds would apply that you may deem to be inappropriate.

But this is after the fact, and if you are not even asking for a copy of these to be put on file with the Ministry, then who is inspecting to see that these contracts have been done in accordance with the regulations?

Ms. Hart: The Ministry has the overall responsibility to enforce the Act and that would be included. But in my experience, standard forms tend to be minimums and there are many nursing home operators in this province who do not operate on the basis of minimum requirements. The Ministry is of the view that they should be free to have provisions in their contracts that are higher than amendments.

Mr. Callahan: May I ask a supplementary of that? Is it necessary to also put in here a provision that these are the minimum standards and that they cannot be contracted out such as in the... Has thought been given to that?

Ms. Hart: It is not necessary, Mr. Callahan, in our view because it says the contract shall set out. That is mandatory.

The Chairman: Mr. Cooke.

Mr. Cooke: I was just going to point out that I understand Mr. Jackson's concern about a standard contract, but basically by setting out under subsection (4) the components, there is a standard contract. I mean, you are going to have the rights, you are going to have the information necessary for a resident to make a complaint, you are going to list any additional services and the charges for those services and you are going to name the representative of the resident if there is one required.

I mean, that is basically your standard contract. If there is some individual circumstances that require additions to be added on to that, I am not sure that there is any way that the Ministry through regulation or for us in the Committee to add things, how we could add anything that might deal with that. Anything additional would then be in addition to the standard basic contract as set out in the section.

The Chairman: Mr. Davis.

Mr. Davis: Mr. Chairman, just to the Parliamentary Assistant, if, as Mr. Cooke has just indicated, that section (4), those items (a) to (d) are in essence in the contract, why can't the Ministry then create a contract that can be set out to all the nursing homes so that all the people can sign except an agreement for additional charges which would

just have some space that could be incorporated by the local nursing home?

Ms. Hart: In our view, it is much the preferable way of going about it to leave the residents' councils perhaps and the operators that flexibility. A standard form, in my experience, has always been a minimum set of criteria, and even if you leave a little space, what will happen is that every contract in Ontario will be the standard form.

Mr. Davis: Maybe you can help me. Would you assume from your legal background and being the Minister's Representative that section (4a), the rights of the residents under subsection (2) and the obligations which is the bill of rights would be spelled out, all 19 articles?

Ms. Hart: That is an option that is available, yes.

Mr. Davis: You would assume that would be normal, that they would spell them all out so that they would know what they are in the contract or would all they say is that there is a bill of rights, go downstairs and look at them?

Ms. Hart: It says 'shall set out'.

Mr. Davis: So they would be all out there?

Ms. Hart: Yes.

Mr. Davis: The information necessary regarding the residents to make a complaint, and I believe that is in the Act, is it not?

Ms. Hart: Yes.

Mr. Davis: So that would be set out. The names and addresses of a person who will act if necessary as a representative of the residents for the purpose this Act and the regulations, so that would differ only in the name that would be filled in the slot. An agreement for additional services and charges for those services, and I believe they are listed in the Act too?

Ms. Hart: No, it could be any additional services.

Mr. Davis: So there would be a blank space there?

Ms. Hart: Presumably, yes.

Mr. Davis: Why is it so difficult then for the Ministry to put together some kind of form that the nursing home owners and the residents can use as their guides to put the thing together?

Ms. Hart: It is not difficult at all, Mr. Davis. We

just think it's preferable not to do that.

Mr. Davis: Why do you think it is preferable?

Ms. Hart: I have already answered that question.

Mr. Davis: Suppose you answer it again because I did not hear it.

Ms. Hart: It gives for flexibility and it ensures that the residents don't get a standard form stuck under their noses.

Mr. Davis: Suggest to me in (4) where it provides more flexibility other than in section (c)?

Ms. Hart: You can put anything in the contract that the two parties to the contract want to as long as you have the mandatory (a) to (d) sections.

Mr. Davis: What additional things do you think you can put in the contract?

Ms. Hart: I at the moment cannot think of an example, but I suppose there are many.

Mr. Davis: Mr. Chairman, perhaps somebody from the Ministry staff might suggest some of the other areas that might be put in the contract.

The Chairman: It is always possible if you wish to move an amendment and suggesting a contract, but I am not sure why we are spending so much time right now on --

Mr. Jackson: Mr. Chairman, just to respond to that point, I am shocked to hear that the Ministry's plan is to let all the nursing home operators engage their legal counsels to create somewhere in the neighbourhood of 4 or 500 different types of contracts that have a minimum standard set out. Contracts are composed not only of minimum standards of requirement, but they also talk about certain rights that are waived or not waived. I can give you a whole series of examples of clauses that --

The Chairman: I am understanding the argument. I am just saying that it is possible to move an amendment.

Mr. Jackson: We cannot dream up an amendment. I am shocked to here that that wasn't -- I just assumed when I read that amendment that there would be a standard contract developed by the province.

The Chairman: Mr. Reid.

Mr. Reid: It would be the Ministry's intent to work

with the Ontario Nursing Home Association and some of the recognized groups at developing some minimum standard components because our concern is enshrining it into a regulation which makes it seem difficult to change.

The Chairman: There are also two things that might -- just procedurally here to help us get through the morning would be you can wish you can always make an amendment. Also there is nothing within this which says there cannot be a contract if the government so chooses and that is the way it falls so your options are --

Mr. Jackson: They are going to do it after they find out the mess they have created, but then you have got legal contracts in force and you have to wait a period to undo them. I just foresee a problem of trying to help the government overcome it, and if they do not wish to, far be it from me -- our party is on record saying that we should have a standard contract produced here.

The Chairman: I have noticed that.

Mr. Davis.

Mr. Davis: A point of clarification, Mr. Chairman. A question of Mr. Cooke.

Mr. Cooke, is it your understanding with your amendment that the contract that will be created will include and only include those items listed under subsection (4a), (b), (c) and (d)?

Mr. Cooke: Well, the introduction to section (4) says 'a contract entered into in accordance with subsections (3) or (7) shall set out'. And I am not sure whether the legal words used restricts it to that or whether that is the minimum.

Mr. Davis: That is the minimum. Well, Mr. Chairman, I might just try an amendment.

The Chairman: Always open, as we say.

Mr. Jackson: Just one example to try and illustrate the point that I am concerned about. If I wanted to develop a contract which protected me as an operator, I would put in a clause, a pretty standard one, about receiving and understanding and explanation, that I have herein received a true copy on such and such a day; having read and having had it explained to me, I herein waive any right for action on the basis that I was not informed of my rights.

Now I do not want that kind of language developed, and chasing around the province umpteen hundred different kinds of contracts to have them looked into because the advocacy

network that exists is not sufficient to get all of them checked in the 90 days that the Bill provides, or alternatively, I would develop my contract within days or weeks of the Act coming into force and having them all signed. So now you have the problem -- the government has the problem of undoing a contract which in its opinion was inappropriate.

It is just bad management not to do it this way. I cannot understand why the government would be reluctant to assist the residents in standardizing a contract with all sorts of provisions for additional services which can be set out, which is done in many standard contracts in this province.

The Chairman: Ms. Hart.

Ms. Hart: Two points. Even if there were a standard contract, there would be nothing to prevent the operator from adding such a clause. The second point, and I am sure legal counsel will bear me out on this, if such a clause is added and in fact it was not explained to the resident - the resident did not understand - when you are talking about elderly people particularly, they have difficulties with language, it wouldn't stand up in a court.

Mr. Jackson: I just used it as an example. That is not the only example.

The Chairman: Mr. Davis.

Mr. Davis: I do not know where to put it in, I could seek your advice, but 'That the Ministry in consultation with the Ontario Nursing Home Association shall design a format for the contract to be used by nursing homes in Ontario'.

It is kind of rough, but the intent is there. It probably needs to be clarified.

The Chairman: Well, the numbering of it we can worry about later. Why do not we deal with it as an (8) at the moment, but it can be shifted by counsel.

Mr. Davis: It can be shifted by counsel.

The Chairman: That the Ministry in consultation with the Ontario Nursing Homes Association shall design a format for the contract to be used by nursing homes in Ontario is the motion.

Mr. Davis.

Mr. Davis: Well, Mr. Chairman, I think in the discussion that is gone up to this point, there has

certainly been expressed the reasons why it should be there, and in the concept of providing more flexibility, the only area that there is flexibility is either in addition to the format, the minimum format laid out by Mr. Cooke or dealing with section C, which is the additional services and charges. The rest of the format I think would be very standard, and I think that it would just be a beneficiary to everybody concerned in this to have it stated and set out to the nursing homes in some kind of format.

The Chairman: Mr. Callahan.

Mr. Callahan: I think the very nature of contract, having the right to contract is probably one of the most basic rights that any individual has, and what you are saying, Mr. Davis, through your amendment -- Mr. Davis, what you are saying through your amendment is that, you know, let's through an action of the Legislature say that this is the contract.

Well, I would say that by doing that, you in fact may as well no longer use the word contract because contract means a decision between two willing parties. All the government is saying by the legislation here is that there are certain minimum items that have to be in there. We leave it open to you to contract and again, as I say, between two parties, to a free will of two parties to decide on what particular circumstances are particularly attributable to that particular nursing home and that particular area of Ontario.

I would think it would be an impossible task to sit down with the nursing home operators and try to determine what would be a standard contract because it may apply to Metro Toronto and they have absolutely no application to a rural riding. There may be special things that have to be put in. I would envisage what would happen and then maybe that is an alternative, would be to have the residents' council in cooperation with the nursing home operator arrive at what would be a standard contract.

I do have some sympathy for what Mr. Jackson said. If an elderly person were to wind up with a seven page contract, particularly if the people bringing that person in or if that person comes in alone, they are going to have some difficulty in reading through it and understanding that those seven pages do not in fact require, you know, cast requirements on them that are going to be difficult. And elderly people do tend to not want to sign something when it is a very lengthy item, so perhaps as an alternative, I do not know whether that is agreeable, is that the minimum terms as Mr. Cooke has put them in his amendment be required and mandatory and that --

The Chairman: They already said that.

Mr. Callahan: I know he says that, but in addition to that, perhaps the balance of the contract might be one approved by or negotiated between the residents' council and the particular nursing home operator.

The Chairman: Any further discussion on the subamendment? I think we have had the debate in the earlier part, and so it would be 'That the Minister in consultation with the Ontario Nursing Home Association shall design a format for a contract to be used by nursing homes in Ontario'.

Mr. Cooke: Just one question. Sorry, but I am not sure that I recall when we've put these kinds of requirements on legislation that we name who we are consulting with.

Mr. Davis: Whoever.

Mr. Cooke: There are nursing homes that are not even part of the Ontario Nursing Home Association. I mean, --

Mr. Davis: I think Christine Hart suggested to just take that section out.

Mr. Cooke: And I said the Minister already has his power. If the Ministry already has the power, is there anything in this amendment that the Ministry cannot live with?

The Chairman: You are now suggesting, Mr. Davis, that the words 'in consultation with the Nursing Homes Association' be taken out?

Mr. Davis: Yes.

The Chairman: That the Minister shall design a format for a contract to be used by nursing homes in Ontario.

Ms. Hart: The Ministry can design a format.

The Chairman: I thought this was going to deal with the matter of bringing to a head whether or not should we or should we not. If it is going to stand, I think it really needs a lot of rewording, and if not, it should be voted against.

Mr. Jackson: Because there should be a renewal clause in there.

Mr. Cooke: Let us just go ahead.

Mr. Jackson: Be prepared to vote against it if it is not.

Mr. Davis: I think you got your message, Mr. Chairman.

The Chairman: All those in favour of Mr. Davis' motion, please indicate. Down.

Those opposed.

Defeated.

We will go back to Mr. Cooke's main motion.

Mr. Cooke: Legislative counsel suggested a couple of words that need to be changed. Very minor. At the end of section (4) where it says 'a Contract entered into in accordance with subsection (3) or (7) shall include,' so we are removing the words "set out" and then at the beginning of subsection (a), it would say 'a statement of'.

The Chairman: All right. Everything else stays the same.

Mr. Allen.

Mr. Allen: Could I ask a question of the Parliamentary Assistant and perhaps of her officials with regard to languages of communication, and I raise it in connection with the contract because it does seem to me that there is a question, first of all, given the move of the government with regard to government services in French, whether (6) from the present amendment should not have an indication that the copies will be in English and French and then in terms of the needs of the resident, whether it would not be possible for the Minister to make copies available of that portion of the Bill in a variety of languages so that one could at the same time provide for the resident a copy of subs (1), (2), (3), (4) and (5) in a language the resident understands.

Ms. Hart: If I might respond to that, Mr. Allen. In subsection (4) where it talks about the information necessary to enable the resident to make a complaint, now that kind of wording by implication that the resident signing it has to understand it, and that may well include another language.

Mr. Allen: Does that mean then that the Ministry will in fact either through regulation or just in practice be developing copies of this critical part of the Bill in a variety of languages that are common in Ontario?

Ms. Hart: I cannot answer that question specifically. I can say that we already provide in certain areas of the province services in French, so it makes sense to me that

there would be a French translation. With respect to other languages, it would depend on the need, I would suspect.

Mr. Allen: Would it be normal then for nursing homes to post in both languages this section of the Bill?

Ms. Hart: Well, as I indicated previously, it doesn't make sense to post an English copy in a home where the language spoken is French, and I think that would probably be covered by the other legislation where we provide services.

Mr. Allen: Well, I do not want to delay the process because I know time is running out, but I will just leave that with you, that it would be very easy for the Ministry to provide multiple copies of other language translations of that critical section of the Bill and to make them available to nursing home operators so that they can circulate them, use them as needed with regard to the residents, and it might well be advisable to consider some way of embodying a language of communication section in dealing with the regulations attached to the Bill.

The Chairman: Thank you, Ms. Hart.

Mr. Callahan.

Mr. Callahan: I just wanted to enquire. Legislative counsel has asked to change the wording to read 'shall include a statement of the rights of the residents and so on'. Now is it the intent that the contract would do no more than recite those items and that the person would be left to pursue their remedies under the Act itself or was it the intent that this contract, and the normal definition of a contract I get is that people's rights are secured by the contract itself.

By changing the wording to read 'include a statement of', it seems to me that all you are doing is saying that they have to set out the rights that are contained within the Bill and they therefore in my view would have no remedy under that contract. They would have to rely exclusively on their remedy under the Act. I do not know whether that was Legislative counsel having given thought to that or whether that was the intent.

Mr. Cooke: That was not my intent.

Ms. Baldwin: It wasn't my intent either.

Mr. Callahan: Well, I think that is what's achieved, would you not agree, that it is just simply a listing of the Statement of Rights. Not the remedies that normally flow from a contract?

The Chairman: This is not, if I might, any different than setting it out.

Mr. Callahan: Well, I know and I think that was the reasons the word "set out" would change. I would think that you should just leave it as 'a contract entered in accordance with subsection (3) or (7) and shall include da-da, da-da, da-da and nothing more.

Mr. Cooke: I do not know why we need the words "a statement of".

Ms. Hart: I do not think it makes any difference.

Mr. Callahan: Well, just as I indicated to the Chairman, I think by putting "include a statement of", what that requires is that in the contract, you simply list the rights. It doesn't necessarily say that those rights are enforceable through that contract. They are enforceable under the Act obviously, but if the intent is to give the rights to be enforced under the contract, then I would submit that if you do not change the wording, you do not achieve that result.

Ms. Hart: I think we disagree as to the legal interpretation.

The Chairman: I need to know what the drafters -- do you want to do anything with this? The legal counsel says she would not mind a chance to think about it. On the other hand, we could vote on the section and leave it open over lunch and other matters that we have recognized on this, that we could not close off the section and come back after lunch and make any small changes that would be appropriate.

Mr. Cooke: Let us proceed that way.

The Chairman: We can take a vote on that section or leave it open.

Mr. Cooke: If there are minor changes, fine.

The Chairman: All right. Any further discussion on the section? I see none. So Mr. Cooke's motion on section 2, subsection 1a(3) through (7) of the Act.

All those in favour, please indicate. Down.

Those opposed.

Motion carries.

Mr. Cooke: Could I raise one small matter that we could deal with in the next two minutes?

The Chairman: Yes.

Mr. Jackson: I have a series of questions.

Mr. Cooke: I circulated an amendment that was discussed yesterday that simply picks up the regulation that was missed with regard to residents' councils that we missed from the regulations originally and they should have been included in the Act when I made my original amendment, and it simply needs to be approved. It is exact wording from the regulations.

The Chairman: Is this what you have questions on, Mr. Jackson? If that is the case, then we had --

Mr. Jackson: 17d sub (6a)?

The Chairman: Right.

Mr. Jackson: My two questions, very quickly, --

The Chairman: Oh, I was going to say, would you rather try to deal with it so then we can leave this open and go on to that?

Mr. Jackson: We are coming back this afternoon.

The Chairman: We are coming back anyhow on a number of matters and I suggest that we might as well come back and make sure that we are satisfied with this section we have just carried and then move on to any other outstanding sections of 176 and then we still have 177 to conclude. So, we shall now adjourn until two o'clock.

--- Committee recessed at 12:00 p.m.

CA 201

XC12

-578

S-85

Government

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

NURSING HOMES AMENDMENT ACT

HEALTH FACILITIES SPECIAL ORDERS AMENDMENT ACT

TUESDAY, MARCH 10, 1987

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Allen, R. (Hamilton West NDP)

Andrewes, P. W. (Lincoln PC)

Baetz, R. C. (Ottawa West PC)

Callahan, R. V. (Brampton L)

Cooke, D. S. (Windsor-Riverside NDP)

Cordiano, J. (Downsview L)

Cousens, W. D. (York Centre PC)

Hart, C. E. (York East L)

Jackson, C. (Burlington South PC)

Reycraft, D. R. (Middlesex L)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Cousens

Mitchell, R. C. (Carleton PC) for Mr. Baetz

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Hart, C. E., Parliamentary Assistant to the Minister of Health
(York East L)

Johnson, J. M., Director, Legal Services Branch

Reid, R. H., Assistant Deputy Minister, Institutional Health

Campbell, M., Counsel, Legal Services Branch

Sapsford, R. T., Director, Nursing Homes Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, March, 10, 1987

The Committee met at 2:13 in Room 228.

The Chairman: I call the committee to order. It is ten past the hour. I remind Members where we are. We are dealing with Bill 176, An Act to Amend the Nursing Homes Act. We have just carried an amendment by Mr. Cooke to section 2 for subsection 1a, a new section (3) through (7). We have left that open, however, and have not taken the vote on the sections as amended because there was some thought that there might be further amendments brought to my attention, and they are off being Xeroxed now I see.

Perhaps while they are being Xeroxed, the Parliamentary Assistant might read them into the record.

Ms. Hart: I would be happy to do that, Mr. Chair.

I move that subsection 1a sub (7) of the Act as set out in Mr. Cooke's motion amending section 2 of the Bill be struck out and the following substituted therefor:

Transition " (7) Subject to subsection (8), every licensee shall within 90 days after the coming into force of this act enter into a written contract with every person who is a resident at that time and has not entered into a contract under subsection (3) or if necessary with the representative of the resident relating to the services provided by the nursing home.

" (8) Where either party described in subsection (7) refuses to enter into a written contract with the licensee, the licensee shall note that refusal in the residents' records and a contract between the licensee and the resident shall be deemed to have been made containing the provisions enumerated in clauses (4a) and (b) and with the concurrence of the resident containing the provision enumerated in clauses (c) and (d)."

The Chairman: Would you like to speak to the move?

Ms. Hart: Yes, in discussing the original amendment, it came to our minds that the circumstance might arise where a resident would refuse to sign a contract, and in order to cover that eventuality, an implied contract is set out under this subsection.

The Chairman: Mr. Cooke.

Mr. Cooke: I just want it to be clear. This is a transition section so that new residents of nursing homes will have a written contract and that we are not creating an opportunity for nursing home owners to refuse to sign a contract all of the time.

Ms. Hart: That is right.

The Chairman: Mr. Davis.

Mr. Davis: Perhaps the Parliamentary Assistant would explain why if a resident decides they do not want to sign a contract, why the government is going to insist that it be signed anyhow?

Ms. Hart: It is the intention of the legislation that everybody in the home being governed by the same sets of obligations and rights, and in order to have that occur, if the resident refuses to sign, then those obligations and rights have to be implied.

Mr. Davis: Wouldn't it be fair to assume that if the resident decides for whatever reasons, be they religious reasons or cultural reasons or just they do not want to sign the contract, that the kinds of quality of care, the rights that are now in the legislation would simply apply anyhow?

Ms. Hart: That might well be the case, but for greater certainty for the operators particularly, it was felt that it should be spelled out in the legislation.

Mr. Davis: If a person is admitted to the home who has lost their faculties for any reason, will somebody sign it on their behalf?

Ms. Hart: Yes, that would bring in all of the provisions to do with mental incompetency and the substitute decision-making.

Mr. Davis: Who would sign it on their behalf?

Ms. Hart: Their representative.

Mr. Davis: What happens if they have lost their mental faculties before they get there? Who appoints that representative?

Ms. Hart: Well, there is a whole mechanism --

Mr. Davis: That looks after that?

Ms. Hart: That is right.

The Chairman: Outside of this Legislature.

Mr. Davis: I just find it interesting, Mr. Chairman, that I would assume that the people who operate nursing homes would offer the kinds of services to anybody that is guaranteed in this Legislature whether they sign the contract or not.

Mr. Callahan: If they do not offer, they do not have the rights.

Mr. Davis: Oh, come on. If the person refuses to sign it on religious grounds, then what do you do?

Ms. Hart: They are governed by the terms and conditions in the statute.

Mr. Davis: That you will force them to sign?

Ms. Hart: This is not an unusual provision in the statute by any means. For example, when goods are being carried from A to B and there isn't any bill of lading which is required by statute, the statute implies the terms in the contract of carriage. It is quite a normal provision.

Mr. Davis: That is not the question I asked. The question I asked was if the person wishes not to sign the contract based on a religious ground, will you then assume that the contract has been signed?

Ms. Hart: It is implied, yes, by the legislation, by the wording of this amendment.

Mr. Cooke: Aren't we really saying, I mean, getting into the legality of it, what we are saying is that even if they do not sign it, they still enjoy the benefits of the bill of rights. That is all that we are saying.

The Chairman: You have not had it until this second, but we are going to look at sub (8) which indicates that it is presumed that (4a) and (b) apply but that it still requires a signature and special agreement to get the other provisions of (c) and (d) as applying to the person, so it is only those things that you have already entrenched in the bill of rights --

Mr. Jackson: The list.

Mr. Cooke: The list of charges.

The Chairman: Yes, how you go about complaints that are definitely there and that anything above that would still have to be signed for and a person can still refuse to do that?

Mr. Jackson has a comment.

Mr. Jackson: I am just wanting to understand what the legal effect is of someone having deemed to have agreed to have signed the contract. After all is said and done, we still have the Act which gives them some remediation in the absence of a contract, but I mean, I would like to understand more the legal process which is applied to someone who is deemed to have signed a contract when the government is -- how can the government enforce that or how can the courts enforce it on an issue of a person's rights?

Ms. Baldwin: Maybe Mr. Johnson would rather answer that. Would you like to or would you like me to?

Mr. Johnson: I would like you to give it a try.

Ms. Baldwin: The bill of rights, as it is set out, puts an obligation on the licensee to respect and promote or whatever the words are, so if the licensee doesn't do that, that would be an offense under the Act.

The deeming of a contract creates a legal fiction by which there is a contract between the licensee and the resident even though they have not officially made one and that gives the residents the right to sue the licensee for not living up to his obligations under the Bill of Rights.

The Chairman: Anything further?

Mr. Jackson: Yes, if I can key in on the word "representative", at a point we were talking about legal representative and this was a more formalized relationship which involved people who could sign contracts. Then it evolved into a representative which could be a broader based definition which could be, I nominate my friend to be my spokesperson or my representative at the council meeting.

Now please enlighten me with respect to the redefinition of the word "representative" in the context of them being able to sign a legal document on my behalf.

The Chairman: Ms. Baldwin or Mr. Johnson. Whichever.

Ms. Baldwin: I will make a limited comment on it and leave it to Mr. Johnson whether he wants to elaborate beyond that. All I can say about it is that as the Bill stands now except for a couple of places where the committee may want to make corrections, we are referring simply to a representative, and in Mr. Cooke's motion here dealing with contracts, that motion is specifying that at the time of the entering into that contract, the representative will be indicated in the contract.

Mr. Jackson: Okay. Well, I will put it on the table.

This thing is getting -- we are peeling an onion here and it is getting stranger and stranger by the minute.

What is preventing someone from setting themselves out as the so-called representative and that person may be one of a family member whose interests we would hope and assume would be in the best interests of the resident. He could be somebody designated by the nursing home who could be advocating in the best interests of the resident or it could be one from a broad range of advocacy groups within the community who we would assume would be advocating in the best interests of the resident.

However, all three of those named individuals may not necessarily work in the best interests of the resident, but they are the legal signatory to the contract.

What is the net effect of that when it is applied in a way where someone can walk in and say here, I have got 20 contracts and here are 20 people that are chronically ill or in need of chronic care and I am going to sign on their behalf.

Ms. Baldwin: I think that is a policy question that is best answered by the people from the Ministry.

Mr. Jackson: But it is a legal question if I am asking about the effect of what happens to them in terms of the person who has signed on behalf of someone gets into a fight over whether or not they interpret the contract as their signator.

Ms. Baldwin: There is nothing in the Bill right now which spells out how it is to be determined, who is going to be the representative who is named in the contract. The Bill is silent as to that. I believe the Ministry officials have discussed it.

Mr. Jackson: The bottom line here is that I was comfortable when we had this legal representative definition because it was in the context of -- at that time the government wasn't supporting the bill of rights and it was open to question. Now we have got the bill of rights. Now we have got the contract.

Now I would like to know what the implications are for someone who is not the legal signatory for the individual, just a person designated as a representative.

The Chairman: Ms. Hart.

Ms. Hart: This actually may be the one place where we should have the words 'legal representative'.

Mr. Jackson: That is what I am trying to say.

Ms. Hart: Because that is an oversight on my part. I should have noticed that, but when you are signing a contract, I think a case can be readily made that it shouldn't just be an informal representative. It should be someone who is a representative by operation of the law, and I would be prepared to make that amendment.

The Chairman: Where would that go? I would consider them to have a bit of confusion about this in the sense that does it go as 4 sub (d)?

Ms. Hart: It goes in sub (7), the second last line after with. "With a legal representative of the resident".

The Chairman: But I guess my question is: Are we still going to distinguish between legal representatives and representatives and therefore (4d), which all of this refers back to, are we going to have in that section the words "legal representative of the resident" or are we going to leave it to be generic representative in that section?

Ms. Hart: I will take some advice from counsel.

Mr. Cooke: In this amendment, we have the ability for the resident to name who his or her representative is, and obviously, the only time that that would work would be when the resident is competent and able to sign for this contract on their own. Otherwise you would have the representative signing the contract naming him or herself as the representative.

So obviously when you enter into the contract, the representative under subsection (4d) would be in effect only when the resident is competent and signing for him or her self.

Mr. Jackson: Why do not I raise it in the context of another point then, the Bill on Mr. Cooke's point.

What happens if an advocacy group or someone designated by the residents' council signs on behalf of Mrs. Jones and Mrs. Jones' son or family member finds out that they did not want that individual signing the contract or that they would advise their mother not to have anybody else sign it on their behalf but that they sign it.

I mean, how complicated are we going to get with this thing with people -- I have made my strong points with respect to the legal implications before the courts with someone who is called before the courts for having signed something on a resident's behalf and arguing as to whether or not they agree for or against the person that they have been asked to sign on behalf of.

The Chairman: Ms. Baldwin I believe has something helpful for us at the moment. I want to believe.

Ms. Baldwin: If we look at the motion that is in front of us now, subsection (7) of it, this is the one place where perhaps there is a difficulty in not referring to a legal representative.

I would suggest if the Committee considered crossing out the following words on the fourth and fifth lines or, if necessary, with a representative of the resident, then the subsection would read in such a way that the contract is entered into between the licensee and the resident.

It would also be the case by operation of law outside the Nursing Homes Act that if the resident was unable to make a contract, then the person who in law is entitled to do that on the resident's behalf could do that.

The Chairman: Mr. Callahan.

Mr. Callahan: I am just concerned about that because we may be setting up a mechanism that becomes terribly complicated because if the representative has made the legal representative by reason of the power of attorney, it is all right if the person when they sign the power of attorney is mentally competent because their powers of attorney allow it to continue even after the person becomes mentally incompetent.

What about the person who is mentally incompetent to start out with? Do they have to go through the lengthy procedures of having a comitia of their person and estate appointed by the Court before they are able to become the legal representative under this section in order to sign their elderly loved one into a nursing home? It is very complicated.

The Chairman: Ms. Hart.

Ms. Hart: That would be the case in any event because a person would require a representative to look after his or her financial affairs.

Mr. Callahan: Well, I do not want to carry it to be ridiculous but I --

The Chairman: I do not understand the distinction between what you are saying now and what is now being suggested by legal counsel.

Mr. Callahan: What is being suggested by legal counsel is that it is the legal representative, but you have to become the legal representative by either a contractual decision between --

The Chairman: She is not suggesting that. What she is suggesting is that we take out any reference to representative in this case which means it either has to be the resident or the powers under the other acts about who will be -- the person who is legally responsible will fall into place. Surely at this stage that is the best thing to do.

Mr. Callahan: Well, the concern I have got is that from a practical standpoint to get someone legally declared to be mentally incompetent can at times be very difficult. I have not looked at the acts for some time, but it requires evidence from a psychiatrist and some of these people if there is any type of possibility the person may not be declarably mentally incompetent, they will not do it so what have you got? You have got this person that is out there who cannot get into a nursing home because of this particular wording.

The Chairman: It is not a matter of getting into a nursing home. Let us be clear. What we are dealing with is the contract question, and what this is stating now is that if you regard them as such, you will be deemed to have a contract at least to cover A and B and that will be the case whether or not the matters of who is your trustee or whatever have been worked out.

That will be handled even in that eventuality so I am not sure what the problem is for these two sections according to what you are saying at the moment. It is not for admission to a home. This is merely in terms of how a contract covers you and this is essentially -- this section now with a special suggestion from your counsel getting rid of the notion of representative here has it fairly straight forward and this is for existing patients of course.

Mr. Callahan: Now I do not want to belabour the point, but it does give me some concerns. You have now taken out the word representative. You have got the word resident and then something to the effect the person - I did not get the exact wording - somebody who legally represents you.

The Chairman: No, nothing. No words at all.

Mr. Callahan: No words at all.

Mr. Jackson: It is not needed because if you are represented by legal counsel for the purposes to sign a contract, they would in effect sign on your behalf and that is what the Bill says.

Mr. Callahan: So you have got (7) with just "resident" and if the resident is incompetent and cannot

sign and the person is deemed to have entered into a written contract with reference A and B because I draw your attention to the opening clause 3 which says, and it is mandatory, there shall be a written contract relating to the admission of every resident to a nursing home.

I do not know whether that can be interpreted meaning that if you do not have one, I see that is carrying too far. You do not get in.

The Chairman: These subsections only deal, by the way, with people who are presently in nursing homes.

Mr. Cooke: This is the transition.

The Chairman: This is the transition.

Mr. Jackson: Well, then that raises another question. If this is just created for transition, then does that mean that everyone who enters, new entrants, must sign, period, end of sentence?

The Chairman: I am not sure if you are getting another amendment or not. All I can tell you is --

Mr. Jackson: No, listen. If we stop right now, this is what the government has got to live with so they should be answering whether or not that is going to happen.

The Chairman: All I have to say is that all this deals with at the moment is transition.
Do you want to make a comment on --

Mr. Jackson: Well, Mr. Chairman, I asked the question. Is that the understanding, that if this is passed, that new entrants must sign a contract, period?

The Chairman: Yes, unless we get another amendment.

Mr. Jackson: Give me that section again?

The Chairman: (3). That is sub (3) on Mr. Cooke's.

Mr. Jackson: So the contract shall be reviewed annually by the resident or resident's representative, so that is a review, but nothing is there in the Bill for new entrants and representatives for signatory purposes?

Thank you.

The Chairman: Anything further? None? Okay.

We are dealing with amendments proposed by Ms. Hart to the section which we have just amended, and they would create a new sub (7) and a new sub (8). On the first line

of sub (7), there is a typo that you will note and then we have removed the words 'or if necessary' with 'a representative of the resident' in that clause, and on clause 8 we now have where either party described, et cetera, and then on the second last line, provision should be provisions and that is what we are dealing with.

All those in favour of Ms. Hart's motion, please indicate.

Motion carries.

So on the government's motions that you have just been sent, we now have two more motions before we can finalize this section. Who is going to move for me?

Mr. Reycraft. Thank you.

The next one.

Mr. Reycraft: Mr. Chairman, I move that clause 1a(4a) of the Act as set out in Mr. Cooke's motion to amend section 2 of the Bill be amended by striking out 'the obligation of the licensee' in the second and third lines and inserting in lieu thereof 'a statement by the licensee agreeing'.

The Chairman: Parliamentary Assistant.

Ms. Hart: This is merely to make it absolutely clear that this section is enforceable by the resident.

The Chairman: Where does this go? It is in the first sub (a). Obligation of the licensee to.

Mr. Callahan: Mr. Chairman?

The Chairman: Yes, Mr. Callahan.

Mr. Callahan: Does that mean that the amendment that we had had suggested by legislative counsel of the words 'include a statement of' are taken out?

The Chairman: I do not know. We now have 'a statement of the rights of the resident under subsection (2) and a statement by the licensee agreeing to respect and promote those rights'. That would be the new wording.

Ms. Baldwin: The intention and the drafting of this motion was that it was a motion to amend that subsection as the Committee passed it before lunch including those words. So with regard to clause A, it would read the contract entered into in accordance with subsection (3) or (7) shall include A, a statement of the rights of the resident under subsection 2 and a statement by the licensee agreeing to respect and promote those rights.

The Chairman: Any further discussion? Seeing none, all those in favour please indicate. Down.

Carried.

Mr. Reycraft.

Mr. Reycraft: Mr. Chairman, I move that subsection 1a(5) of the Act as set out in Mr. Cooke's motion amending section 2 of the Bill be amended by striking out 'the contract' in the first line and inserting in lieu thereof 'a contract entered into in accordance with subsection (3) or (7)'.

The Chairman: Fine. That just makes it more specific I presume.

Any discussion?

Mr. Jackson: Mr. Chairman.

The Chairman: Mr. Jackson.

Mr. Jackson: Should that not include (8) as well in the second transition clause?

Mr. Callahan: It is not going to change anything. It is going to be the same words every time.

Mr. Jackson: If you are dealing with a contract, -- well, counsel knows my question. Why are we not including (8) as well which refers to a different type of contract?

Ms. Hart: In sub (4) we are talking about a contract entered into. In sub (8) it is a deemed contract which is not entered into in the legal sense and that is --

Mr. Jackson: Oh, well what is the difference then?

Mr. Cooke: How can you review an unwritten contract?

The Chairman: It is unsigned.

Mr. Jackson: It is deemed to have been signed. In my view, I thought I listened carefully and that I was told it would have the same force and effect in law which was the question I asked.

So if it is, for the purposes of the definition of a contract, then why is it not included? It is one of the contract.

The Chairman: Any particular reason why one would not review that particular agreement today? Why don't we just

add sub (8).

Mr. Jackson: If there was a reason it was to be left out... that is why I asked.

The Chairman: So it would now be 3(7) or (8).

Thank you, Mr. Jackson. Anything further?

All those in favour?

Carried.

Is that all I have now on this? If that is the case, shall section 2(1a) as amended carry?

Carried.

But I presume there is more. The next thing we deal with is 15. Let's take them in order now. Section 9 is the next one to which I have an amendment. It is a government motion.

Does anybody have them available at this time? Ms. Hart, why don't you read the first amendment then.

Ms. Hart: I move that section 9 of the Bill be amended by renumbering subsection (1) and subsection (2) and by adding thereto the following subsection:

9.-(1) Subsection 12(1) of the said Act is amended by striking out "legal representatives where the residents are unable so to do" in the fourth and fifth lines and inserting in lieu thereof representatives.

The Chairman: Thank you.

Would you speak to that.

Ms. Hart: Yes, as we were going through the amendments, from time to time we called representatives of residents' legal representatives and sometimes just representatives, and legislative counsel has kindly gone through the Act for us and tried to bring some consistency to it and that is the reason for this amendment.

The Chairman: So I had better get things in the right order.

Would someone move that we reopen section 9, please?

Mr. Cooke: So moved.

The Chairman: Thank you. Agreed? Agreed.

And the motion has now been read by Ms. Hart. Any further discussion?

Mr. Jackson: What section is that?

The Chairman: Section 9 and it is creating a renumbering. The original Act that amends the following: Subsection 12 sub (1) which presently reads, 'where the licensee's license is revoked and the revocation is thus final and where the nursing home is otherwise being operated without a licence, the residents or their legal representatives where the residents are unable to do so shall arrange to vacate the premises as soon as is practicable and the Director shall assist in finding alternative accommodation' replaces the phrase 'of the legal representatives where the residents are unable so to do' with the word 'representatives'.

Mr. Jackson: Can I ask you a question? Is it possible - to use a hypothetical in order for me to understand this because I am not a lawyer - we are talking about moving some patients or revocation of the license and then moving the resident?

The Chairman: One would presume.

Mr. Jackson: Okay.

The Chairman: Anything further on the amendment? If not, all those in favour, please indicate.

Carried.

Section 9 as amended carry?

Carried.

Somebody move to reopen subsection 10(2). We are opening subsection (2) of 10. It amends 13(4) of the Act.

Am I correct?

Ms. Baldwin: Yes, we have a motion. I will show it to you in a second.

The Chairman: Okay, we are clearing up in this section that we have passed already, we are clearing up the same question of legal representative again, so I need somebody to move that we open section 10.

Mr. Cooke so moved. Carried?

Carried.

And Mr. Reyecraft.

Mr. Reycraft: Mr. Chairman, I move that subsection 13(4) of the Act as set out in subsection 10(2) of the Bill as amended by this Committee be amended by striking out 'legal representative where the resident is unable to understand the subject matter of the written notice' and inserting in lieu thereof 'representative'.

The Chairman: Thank you. Any discussion? None.

All those in favour, please indicate. Down.

Carried.

Section 10 as amended carry?

Carried.

Section 15. I think the first one is the government motion, is it? Yes.

Somebody move that we open 17d. Will someone move that we reopen 17d? Mr. Cooke, thank you.

All those in favour? Down.

Agreed.

Mr. Reycraft, would you like to move a motion?

Mr. Reycraft: Mr. Chairman, I move that subsection 17d(3) of the Act as set out in section 15 of the Bill as amended by this Committee be amended by striking out 'legal' wherever it occurs.

The Chairman: I agree. Should we do it throughout the whole Act? If it appears, legal, strike it out.

Any further discussion?

Mr. Jackson: So I understand, Mr. Chairman, it is wherever it occurs within 17d?

The Chairman: Right. 17d(3) just. It occurs twice I think.

All those in favour?

Carried.

I think I have another amendment to 17d for Mr. Cooke.

Mr. Cooke: 17d of the Act as set out in section 15 of the Bill be amended by adding thereto the following subsection:

(6a) Where a meeting is held under subsection 5 or 6, the administrator shall notify the Director within 30 days of the results of the meeting.

It is just simply moving the last section of the regulations with regard to setting up residents' councils into the Act. We already moved 3 and it should have been in my original motion.

The Chairman: Discussion. Mr. Jackson.

Mr. Jackson: I had an idea that that was with respect to the method of communication. Was that verbal or in writing? Is it nonspecific in the rights?

The Chairman: We need some help with that. Did you take the wording specifically from the regs, I believe.

Ms. Baldwin: It is word for word from the regs.

The Chairman: So it doesn't specify whether that is the oral or written?

Ms. Baldwin: Not in the regs. The only change is the change in the subsection numbers so that it corresponds with this Act.

Mr. Callahan: It has to be set by it within 60 days if it is in writing.

The Chairman: Good point. Any further discussion? I am seeing none.

All those in favour, please indicate. Down.

Carried.

Shall 17d as amended carry?

Carried.

I believe that is it except for the last 2 sections. 18, this Act comes into force on the day it receives Royal Assent. All those in favour?

Carried.

19, the short title of this Act is the Nursing Homes Amendment Act, 1986.

All those in favour? Down.

Carried.

Shall the Bill as amended be reported?

Agreed? Agreed. Wonderful.

Shall we deal with Bill 177? No. We have motions, helpful motions from Ms. Baldwin again to help us to make this Act conform to what we have just passed. A useful idea. Not always followed up.

We're dealing with Bill 177. We have an amendment to section 1, so I suggest perhaps that the Parliamentary Assistant could read it into the record for us.

Ms. Hart: With pleasure. Mr. Chairman, I move that subsection 10(4a) of the Act as set out in section 1 of the Bill be struck out and the following substituted therefor:

"(4a) Where the Board is required to hold a hearing, it shall proceed forthwith to hold a hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the license, that it would be just and reasonable to give the licensee that opportunity and that delaying the hearing will not adversely affect the health or safety of the persons served by the health facility."

The Chairman: Thank you, Ms. Hart. Would you like to speak to it or...

Ms. Hart: This is merely to bring the Health Facility Special Orders Act in line with what we have passed on the new Nursing Homes Act so it reverses the onus in the same way as it did in the other Act.

Mr. Jackson: The Official Opposition will be supporting the amendment.

The Chairman: Mr. Cooke, any comment?

Mr. Cooke: I think we have an amendment that was similar, so that is fine if that is what you want to do.

The Chairman: All those in favour of Ms. Hart's motion?

Carried.

Sub 2. Shall section 1 as amended carry?

Carried.

Subsection 2 sub (1). Who would like to read this?

Ms. Hart.

Ms. Hart: I move that subsection 11(2) of the Act as set out in subsection 2 sub (1) one of the Bill be struck out and the following substituted therefor:

"(2) Where the licensee holds a license under the Nursing Homes Act, any resident or employee or group of residents or employees who request party status are also parties to proceedings before the Board under this Act.

"(2a) Where the licensee holds a license under the Nursing Homes Act, the Board may permit any person who is not a party before it including a resident of the nursing home, a representative of a resident of the nursing home, an employee of the nursing home or any other person who may be affected by its decision to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent."

The Chairman: Thank you, Ms. Hart. Do you have anything to add at all?

Ms. Hart: It just brings this Act in line with the other.

The Chairman: Any further discussion?

All those in favour, please indicate. Down.

Carried.

Mr. Cooke, there is your amendment that you moved.

Mr. Cooke: I believe it does the same thing.

The Chairman: Yes, so you have one for 3 but not for 2?

Mr. Cooke: Right.

The Chairman: The government has a sub 2(3).

Ms. Hart: I move that subsection 2(2) of the Bill be struck out and the following substituted therefor:

"(2) Subsection 11(3) of the said Act is amended by inserting after subsection 1 in the first line or 2 and a person who is permitted to make submissions to the Board under subsection (2a)."

The Chairman: Thank you. Any discussion? All those in favour, please indicate. Down.

Carried.

Let's just make sure we have nothing else on 2 and that will be all.

Shall section 2 as amended carry?

Carried.

Section 3. Mr. Cooke, I think I have an amendment from you. Do I have any others?

Mr. Cooke: I am trying to figure out exactly what the last amendment is for. However, I will move it and someone can tell me.

I move that subsection 11a(3) of the Act as set out in the section 3 of the Bill be amended by inserting after given to in the third line, the witnesses and, so it would now read a person shall not take evidence from a witness under subsection 1 unless reasonable notice of the time for taking the evidence is given to the witness and all parties to the proceedings.

This was going to be a companion amendment to this Bill from the first bill and I gather it was not enacted in the first one so it is not required in this one.

The Chairman: Withdrawn. Thank you. There are no amendments to 11a (1), (2) and (3). Shall 11a carry?

Carried.

Section 4. This Act comes into force and it later receives Royal Assent? Carried?

Carried.

5. The short title of this Act as the Health Facilities Special Orders Amendment Act 1986. Carried?

Carried.

Shall the Bill 177 be reported?

Reported.

Thank you all very much. If the members are not going to be around and would like to fill out your expense forms, they will be ready for you in a minute. In advance, may I thank the Members for their work on this. This is easily

complicated enough legislation that we could have taken a lot longer dealing with this than we have, and I think the co-operation on all sides has been very useful and the process has worked again surprising us all, and I wanted to say that we have had a lot of help from staff.

Mr. Campbell is not here today, but Mr. Johnson has our regards and thanks for his help and, as always, Ms. Baldwin, to keep us on the straight and narrow, thank goodness. Where would democracy be without you.

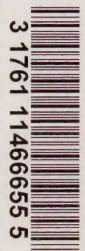
Is there anything further that we need to deal with? If not, the Committee will reconvene presumably after the recess. There may be a meeting of the Steering Committee to decide on priorities while the recess is still on, given that we will all be sitting on other committees.

We are adjourned.

Committee adjourned at 3:00 p.m.



NOV 9 1990



3 1761 1146655 5